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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1310th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Thirteenth and fourteenth periodic reports of Finland (continued)

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION

Effective implementation of international instruments on human rights: Functioning of treaty bodies

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Thirteenth and fourteenth periodic reports of Finland (continued) (CERD/C/320/Add.2; HRI/CORE/1/Add.32)

1. At the invitation of the Chairman, the members of the Finnish delegation took places at the Committee table.

2. The CHAIRMAN gave the floor to two of the Committee's experts who wished to make comments to the Finnish delegation before the latter replied to the questions already raised.

3. Mr. DIACONU welcomed the fact that the Finnish Penal Code condemned genocide, which it defined more precisely than the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. He also welcomed the fact that it was a punishable offence to practise racial discrimination in the services sector or to place any person in a situation of inequality or inferiority on grounds of race or national or ethnic origin. Such a measure was quite rare in the legislation of States parties to the Convention.

4. Two other extremely positive points concerning the struggle against racial discrimination in Finland were the establishment of a large number of advisory boards, such as those for refugees and immigrants and for the Sami and the Roma, on which the communities concerned were represented, and the existence of a large number of civilian associations, such as the Red Cross, the churches, sporting organizations, journalists' associations and the media, which were involved in the campaign against racial discrimination. Although all those activities still needed to be coordinated more effectively, it had to be acknowledged that Finland had endowed itself with an appropriate framework to combat racism.

5. The main problem with which the Sami were faced was that of land rights, since the Sami contested the State's claim to ownership of forest areas. That dispute should be settled through negotiations with due regard for the interests not only of the Sami but of society as a whole. That would enable Finland to become a party to the International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries. He also believed that the adoption of a legislative enactment remained the best way to define the Sami people.

6. The situation of the Roma in Finland was still causing concern. That population was suffering from a higher-than-average rate of unemployment, as well as difficulties of access to housing. The Parliamentary Ombudsman and the police seemed to be doing nothing to eliminate discrimination against them. In that regard, he referred to the case of a municipality in which an official had rejected a housing application submitted by a family of Roma. In a decision of 26 September 1996, the Ombudsman had explained that he had refused to institute legal proceedings because "the decision of that municipal official was based mainly on his deep-seated conviction that the family would cause disturbances in the neighbourhood due to its Romani origins". However,

it was precisely that prejudice that concerned the Committee because it bore witness to a tendency to discriminate against the Roma and Governments everywhere had an obligation to combat such tendencies. If that case were submitted to the Committee under the terms of article 14 of the Convention (consideration of communications from individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention), the Committee would undoubtedly conclude that such prejudice constituted an act of racial discrimination.

7. The report indicated that refugees and immigrants did not complain to the police because, in their countries of origin, they had no confidence in the authorities. The problem was whether, in Finland, those persons had confidence in the police. What were the authorities doing to establish and increase confidence among those populations?

8. With regard to the question of acquisition of nationality, he recalled that, under the terms of article 1, paragraph 3, of the Convention, "Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality". That meant that, although States could regulate the question of acquisition of nationality at their discretion, they should not discriminate in that field. Finnish legislation in that regard should therefore be reviewed in the light of the Convention.

9. Mr. SHAHI said that the report contained a wealth of information, thereby testifying to the evident desire of the Finnish authorities to implement the various provisions of the Convention to a larger extent. He emphasized that the report indicated the following: "The Sami Thing (Sami Parliament) shares the concern of the Committee on the Elimination of Racial Discrimination concerning the Sami land rights and is presently looking into the matter. The Government, which has not yet adopted a political programme on the Sami land rights, has nonetheless requested the Sami Thing to propose a solution to the problem" (CERD/C/320/Add.2, appendix II, para. 20). The Committee therefore hoped that that situation would be regulated before the consideration of Finland's next periodic report and that it would be kept informed of the legislative and other measures taken to enable the Sami to enjoy their land rights.

10. He also reminded the delegation that, in a general recommendation on the rights of indigenous peoples which was adopted on 18 August 1997 (A/52/18, annex V, para. 4 (c)), the Committee had called in particular upon States parties to "provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics". As many other indigenous communities had pointed out, the cultural characteristics, and more specifically the identity, of indigenous peoples were closely linked to the land. Under the terms of that recommendation, the Committee had also especially called upon States parties to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands" (ibid., para. 5). He hoped that, when Finland

presented its next periodic report to the Committee, a satisfactory solution would have been found to the question of the land rights of the Sami people. Since they numbered only 7,000, it should not be too difficult to solve that problem.

11. Mr. AARNIO (Finland) said that the total number of Sami living in the Nordic countries and in the Russian Federation ranged from 70,000 to 100,000. Of the 6,900 to 7,000 living in Finland, the majority (4,000) could be found in Lapland. There were about 1,000 Sami in Helsinki. The question of the definition of the Sami people was problematic because the Sami themselves feared that a broader definition would be tantamount to a forced integration of their group. The Electoral Commission of the Sami Parliament had recently rejected 1,124 applications from descendants of Lapps wishing to have their names added to the electoral register for elections to the Sami Parliament. It had accepted 436 applications on the basis of the linguistic criterion. Those whose applications had been rejected could appeal and the authorities were expecting a large number of such appeals. Although the Government could in no way comment officially on the decision that had recently been taken by the Electoral Commission of the Sami Parliament, he personally thought that the principal question that would have to be settled was the scope and content, in international law, of the right of indigenous peoples to choose their representatives freely.

12. With regard to the right of the Sami to the lands that they had traditionally occupied, the Ministry of Justice was currently preparing a draft solution that would soon be presented to the Minister of Justice. His delegation could say nothing about the content of that text but could nevertheless give an assurance that the Government's aim was to settle the question of the land rights of the Sami and to ratify ILO Convention No. 169 in the near future.

13. His delegation had taken careful note of the Committee's concerns regarding indigenous peoples, as well as the recommendation on the rights of indigenous peoples to which Mr. Shahi had referred.

14. Concerning the question of which groups in Finland were covered by the Council of Europe Framework Convention for the Protection of National Minorities, he said that Finland regarded national minorities as being the Swedish-speaking population, the Sami people, the Roma, the Jews, the Tatars and the Russian population which first settled in Finland in the eighteenth century.

15. In response to the question raised by Mr. Sherifis, the Rapporteur for Finland, concerning the participation of immigrants in municipal elections, he explained that the groups of aliens were normally too small to effectively form associations of voters. However, that situation was gradually changing and, for the forthcoming legislative elections, all the political parties had included immigrant candidates on their list.

16. He acknowledged that, with regard to freedom of association, a distinction that could no longer be justified was still being made between the rights of Finnish citizens and those of aliens. He gave an assurance that his delegation would inform the country of the concerns to which that question was

giving rise on the Committee. At all events, Parliament was currently considering a bill of law that penalized participation in criminal, and particularly racist, organizations.

17. In accordance with an ancient Nordic tradition, the Ministry of Justice was currently responsible for ensuring respect for the law concerning freedom of the press. That arrangement would soon be changed since the Finnish Committee on Freedom of Expression had proposed, in a report submitted in February 1997, that the decision as to whether proceedings should be instituted in respect of the content of an article should lie with the Attorney-General. The right to institute proceedings against written publications would likewise be exercised by the Attorney-General and no longer by the Ministry of Justice.

18. In response to the question raised by Mr. de Gouttes, who wished to know whether, in Finland, penalties could be increased if the motive of the offence was racist, he indicated that members of Parliament, and not the Government, had tabled a bill of law to that end but it had not been possible to take a decision thereon before the closure of the legislative session. However, that question would be tackled within the framework of the current process of overall reform of the Penal Code.

19. Mr. RYTOVUORI (Finland) said that his country had already begun preparations for the organization of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was due to be held in the year 2001 at the latest. At the national level, the main aspects of the preparatory process were being studied by the Finnish Preparatory Committee against Racism, Xenophobia, Anti-Semitism and Intolerance. No decision had yet been taken concerning the possibility of funding non-governmental organizations, although the Government intended to ensure that the NGOs participated fully in the national preparations for the Conference. At the regional level, Finland had taken part in the first meeting of experts organized by the Council of Europe 15 days earlier within the framework of the European preparatory process. Finland also intended to participate actively in the deliberations of the Ad Hoc Working Group established by the Commission on Human Rights to study that question, which was due to meet during the Commission's next session. Last December, Finland had also contributed US$ 28,902 to the Trust Fund for the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003). According to the High Commissioner for Human Rights, although Finland had not contributed to that fund in recent years, that contribution had made it the largest donor. That amount had been specifically allocated to the preparations for the World Conference.

20. Mr. CORTES TELLEZ (Finland) said that, in February 1997, his Government had published its first governmental plan of action to combat racism and promote tolerance at the administrative level. That plan of action had made it possible, inter alia, to take positive measures to considerably increase the training that civil servants received in the field of ethnic relations and racism and also to promulgate new legislation guaranteeing the rights and obligations of the children of immigrants. Numerous special organizations had been established to provide protection against discrimination and the police

had issued new instructions to be followed in the campaign against racism. That plan of action had also made it possible to increase the aid allocated to the NGOs that were implementing programmes to combat racism.

21. With regard to the police, in June 1997 the National Police Directorate at the Ministry of the Interior had issued specific instructions under which police officers were obliged to automatically investigate racially motivated crimes, to provide special protection for minorities and to cooperate more closely with ethnic minorities at the local level. Police officers were also attending training courses on questions of racism and racial discrimination. While acknowledging the fact that the passports of applicants for residence permits were retained throughout the period of examination of the files, he emphasized that they could be returned to applicants who needed to travel.

22. Mr. LAAKKONEN (Finland) provided some details concerning the Finnish system to combat racial discrimination based on ethnic origin. Last October, the Ministry of Labour had established a special steering group to monitor discrimination not only against new immigrants but also against traditional ethnic minorities in all sectors of society. That group consisted of representatives of five ministries and of the Finnish League for Human Rights, as well as the Ombudsman for Aliens. Consequently, there was effective interaction between the Administration and civil society.

23. In the spring, the jurisdiction of the Ombudsman for Aliens would be redefined and expanded and that mediator would subsequently be known as the Ombudsman against Ethnic Discrimination. The system would be fully operational as soon as the appropriations had been approved by the Government installed following the parliamentary elections next April.

24. The shadow report of the Finnish League for Human Rights had omitted to mention the existence of a governmental organization, namely the Advisory Board for Good Ethnic Relations in Finland, which was actively tackling problems of integration and the proposals of which often led to amendments to Finnish law. It was on the initiative of that Board that immigrants had been granted the right to vote in local elections.

25. Within the framework of the campaign against ethnic discrimination, measures were also being taken in the field of housing and, in particular, low-cost housing which posed a very severe problem in some districts of Helsinki. In two months' time, a new enactment on the integration of immigrants would place municipalities under an obligation to take action to combat all forms of discrimination in the housing sector.

26. With regard to citizenship, he acknowledged that nationals of Nordic countries could obtain Finnish nationality after only two years while nationals of other countries had to wait five years (three if they were married to a Finnish citizen). That difference in treatment was attributable to the long tradition of cooperation and solidarity among the Nordic countries, which had established a common market in 1954 and had been operating a common social security scheme since 1955. That particularity was due to be discussed by the European bodies in which the question of dual nationality was to be considered.

27. Finally, with regard to the status of the Roma who had come from former Yugoslavia, most of them had arrived in Finland with about 2,000 other refugees with whom they enjoyed equal status.

28. Mr. KOSONEN (Finland) returned to the question of safe countries of asylum which had already been raised, with regard to Finland, in 1996. As indicated in paragraph 122 of the report, "In the Decision-in-Principle for the Government Programme on Immigration and Refugee Policy the Council of State had decided to abandon the listing of safe countries of origin and to include only safe countries of asylum in the lists of safe countries. The list of safe countries of asylum to be established would include only countries which met certain criteria. The list and its revision would be decided on by decree."

29. The criteria to be met by safe countries of asylum had been defined in a draft amendment to the Aliens' Act (art. 33 (a)), which had been adopted quite recently. Under that provision, safe countries of asylum were regarded as being countries which had acceded without reservation to the conventions concerning the status of refugees, which were complying with those conventions, which were applying the International Covenant on Civil and Political Rights and the Convention against Torture and which, in general, respected human rights.

30. However, the Constitutional Council held the view that the list of safe countries of asylum could not be drawn up by decree since such a text could be used only to prescribe certain minor technical application procedures. That list could be drawn up only in a legislative enactment. No legislative text having so far been proposed, there was a sort of juridical vacuum although the Administrative Commission of Parliament had clearly indicated in its report that the safe countries of asylum included, at the very least, the countries of the European Union, Switzerland, the United States, Australia, Canada, Japan and New Zealand, the expression "at the very least" signifying that the list was not limitative. The criteria laid down in article 33 (a) were therefore already being applied in practice.

31. With regard to the Sami people, many of the cases referred to in the report of the League for Human Rights were still pending and it would be inappropriate to discuss them at the present stage. However, in the light of a previous case that had been brought before the Human Rights Committee, reindeer husbandry had been recognized as one of the fundamental elements of Sami culture and that minority was perfectly able to enforce its rights not only before the national tribunals but also before international bodies. However, in another case on which it had expressed an opinion, the Committee had declared that activities which had only a limited impact on the lifestyle of the Sami did not necessarily constitute a denial of their rights under the pertinent international conventions.

32. It should also be noted that the various cases concerning the Sami had made it possible to establish, in the field, a consultative process that was currently bearing fruit. For example, in the reindeer pasturage areas, the Finnish Parks and Forestry Board was taking care to construct only highways, of limited width, that were strictly necessary.

33. Mrs. HAGELSTAM (Finland) replied, first of all, to the question raised by Mr. Sherifis concerning family reunification. As Mr. Kosonen had already explained in his statement, an amendment to the Aliens' Act had recently been adopted by Parliament. Under those new provisions, it would be possible to obtain a residence permit on the grounds of links of kinship or the need for family protection.

34. The translation of the human rights instruments mentioned in the report had been completed in 1997. The European Charter for Regional or Minority Languages had been translated into northern Sami and the possibility of also translating the human rights conventions into the Romani language had been considered, taking into account the concerns that the Committee had expressed in that regard.

35. In response to the question raised by Mr. Sherifis concerning the dissemination of information on the International Convention on the Elimination of All Forms of Racial Discrimination, she said that the Convention had been published in 1997 in Finnish, Swedish and English in the series of publications of the Ministry of Foreign Affairs with detailed explanations of the individual recourse procedures provided for in article 14. The periodic reports that Finland had submitted to the Committee, together with the latter's conclusions and recommendations, had also been published in the same series and widely distributed to public administrative departments and to all other parties concerned. The periodic reports and the Committee's conclusions and recommendations would also soon be available on the Internet.

36. Mr. YUTZIS thanked the Finnish delegation for its highly informative replies, which had helped to clarify some points. However, without wishing to question the Finnish Government's desire to apply the Convention, he had three comments to make.

37. In paragraph 218 of the periodic report of Finland, it was stated, for example, that "a foreigner who intends to engage in remunerated employment in Finland is obliged to have a work permit". However, it added that "this is not required of a citizen of a State belonging to the European Economic Area (EEA)". He would like to know who had established that distinction and for what reasons, since such a measure had consequences. As noted in paragraph 212, "In spring 1996, about 50 per cent of all immigrants were unemployed, with the rate for Finns being over 17 per cent. In some groups the unemployment rate was 80-90 per cent". However, everyone knew that employment, quite apart from providing a livelihood, was also a factor in integration. Unemployment had an influence on the personality and state of mind of the persons affected and, in particular, had repercussions on criminality. In a juster, but undoubtedly Utopian, world the respective unemployment rates for Finns and aliens should be more balanced.

38. A second point concerned the explanations that Finland had given on the question of countries of asylum. If he had understood correctly, it had finally been decided that the list of safe countries of asylum could not be drawn up by decree. However, the representative of Finland had added that the safe countries of asylum were the countries that had signed the human rights conventions. It remained to be determined whether those conventions were applied in practice. Although he did not have at hand the text of the new

article 33 (a), which was apparently now applicable, it seemed to him that, as long as the list mentioned in paragraph 122 had not been drawn up nominally, there could always be mass expulsions. In that regard, he referred to the case mentioned in the report of the Finnish League for Human Rights concerning Somali refugees.

39. His final comment concerned the Sami people. Paragraph 81 of the report stated that: "In 1994 it was proposed in the Government Bill (on the Sami Thing) that the definition (of the Sami) be made broader". However, the Sami did not seem to have been consulted on that question since paragraph 82 admitted that "the extended definition of a Sami has proved to be problematic" and "the Sami Thing, the Sami Council, the Advisory Board for Sami Affairs, the provincial government of Lapland and ... representatives of the scientific community, among others, demand that the definition be restricted". Paragraph 84 stated, once again, that it was the Ministry of Justice - and not the Sami themselves - which had decided in January 1997 to take measures to relink the Sami identity with knowledge of the Sami language. That text should be compared with one published in October 1998 by the Sami Parliament in which the latter indicated that the members of a group of Finns had systematically opposed Sami cultural autonomy. They were exploiting the very broad definition of a Sami in order to declare themselves Sami and were attempting to dominate the Sami Parliament on the basis of that broad definition and the advantages that the Sami people enjoyed. They were supported by a handful of members of Parliament representing Lapland. In view of the fact that the electoral campaign for the forthcoming parliamentary elections in Finland was being launched, the Government seemed ready to turn a blind eye to those anti-Sami activities by declining to modify the definition of a Sami. That decision had been taken without any discussion in the Government. As a result, the Sami felt that their status was being threatened. He would like to know how the situation stood at the present time. Since the Government was still taking measures without consulting the Sami people, the controversy would probably continue. Texts should be adopted to clarify the situation and re-establish a stricter definition of the Sami under which they would enjoy effective legal protection. He hoped that the goodwill that the Finnish delegation had shown in that regard would produce results.

40. Mr. BANTON, referring to the question of the definition of a Sami, said that he was satisfied with the reply given by the Finnish delegation. However, he wished to clarify some points. First of all, in his previous statement he had merely wanted to point out that, if the law protected Sami reindeer herders, that did not mean that all the Sami were protected since they were not all engaged in that activity. Consequently, that could give rise to a conflict of interests between the Sami herders and others, in contrast to the Swedish system under which reindeer herders were protected as an economic group.

41. With regard to the land dispute in the Lemmenjoki National Park, he was reassured to know that the highway crossing that national park was a forest road. The fact remained that it disrupted the pasturing habits of animals in that area. He therefore wished to know whether measures had been taken to remedy that problem. He noted, with regret, that the report said nothing about the type of arrangements that had been made to resolve such conflicts of interest, about the bodies responsible for settling those disputes or about

the composition of those bodies and their powers to award compensation. He therefore invited the delegation to reply on that point either during the present meeting or during the consideration of the next report.

42. Mr. LAAKKONEN (Finland), replying to a previous question, affirmed that refugees did not need a work permit in Finland. With regard to the rate of unemployment among aliens which, although declining, was higher than that among Finns (38 per cent as compared with 30 per cent), he said that, in most cases, it was attributable to a linguistic problem since persons who spoke neither Finnish nor Swedish found it more difficult to obtain employment. However, a new enactment, concerning the integration of immigrants and the reception of asylum seekers, which had recently been approved by Parliament was due to enter into force on 1 May or 1 September 1999 and should establish a certain balance between the rights and obligations of immigrants. He also indicated that a mixed body, consisting of members of the public authorities and social partners, was due to be established in the near future to look into those questions and a study on discrimination in the labour market was to be published in the autumn of 1999.

43. Mr. KOSONEN (Finland) referring to the list of "safe countries", said that the eligibility criteria for countries, namely their respect for the provisions of the Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights and the Convention against Torture, were, in effect, very restrictive and that list was due to be revised.

44. The last sentence of paragraph 122 of the report (CERD/C/320/Add.2) should also be rephrased since it was apparently causing confusion.

45. Replying to Mr. Banton's question concerning the procedure applied in the event of conflicts involving the land rights of the Sami, he said that, in accordance with the recommendations of human rights bodies, the National Forestry and Parks Board usually consulted the Sami when decisions needed to be taken concerning their lands. However, in the event of a dispute, there was no procedure other than the normal legal recourse. The fact that the Sami did not own the lands on which they lived in no way affected their rights.

46. Mr. AARNIO (Finland), wishing to clear up any misunderstanding concerning the question of the definition of a Sami, said that the decision to expand that definition had been taken jointly with the authorities of the Sami people, as stated in paragraph 81 of the report (CERD/C/320/Add.2), and the problem arose from the fact that Parliament had adopted that proposal without taking into account the date of 1875. Subsequently, the Sami Parliament and the non-Sami population living in Lapland had entered into negotiations with a view to restricting that definition. Those negotiations had not been successful. The Finnish Prime Minister had therefore decided to wait for the September 1999 elections before reconsidering the problem.

47. Mr. SHERIFIS (Rapporteur for Finland) commended the Finnish delegation for its detailed report, its spirit of cooperation, its open-mindedness and the competence of its members. Among the positive points, he mentioned the Government's decision to review the list of "safe countries", the willingness to accede to ILO Convention No. 169, the appointment of an Ombudsman against

Ethnic Discrimination to replace the Ombudsman for Aliens, the new legislation on the integration of immigrants and the reception of asylum seekers which would soon enter into force, the amendment in favour of family reunification and the adoption, in October 1997, of the Decision-in-Principle of the Council of State for the Government Programme for Immigration and Refugee Policy.

48. On the other hand, there were some fields in which further efforts needed to be made, particularly in regard to the situation of the Sami, the Roma, indigenous peoples, immigrants and refugees, the land rights of the Sami which should be established without further delay and the question of racist organizations on which Finland had made no progress since the consideration of its previous report.

49. In conclusion, he called upon Finland to disseminate as widely as possible the principles, aims and provisions of the Convention since, if it was important for citizens to have rights, it was equally important that they should be aware of those rights. He welcomed the progress made since the last dialogue with Finland.

50. The CHAIRMAN, in turn, congratulated the Finnish delegation on the quality of its report and its statements. He said that the Committee had thereby concluded its consideration of the thirteenth and fourteenth periodic reports of Finland.

51. The Finnish delegation withdrew.

The meeting was suspended at 12.05 p.m. and resumed at 12.10 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION

Effective implementation of international instruments on human rights: Functioning of treaty bodies (agenda item 6 (b))

52. At the invitation of the Chairman, Mrs. A. Bayefski, Professor at York University (Canada), and Mr. C. Heyns, Professor at the University of Pretoria (South Africa), took places at the Committee table.

53. The CHAIRMAN invited Mrs. Bayefski to present the study of the United Nations human rights treaty system which she was conducting with Mr. Heyns.

54. Mrs. BAYEFSKI greeted the members of the Committee and said that the study, which was being undertaken in collaboration with the Office of the High Commissioner for Human Rights, would comprise a review of the working methods of the treaty bodies, an analysis of the support and operational mechanisms for the implementation of international instruments, an assessment of the obstacles impeding the optimal functioning of the system and recommendations to improve it.

55. To that end, all the participants in the system - States parties, NGOs, specialized agencies and experts - had been called upon to collaborate and account would be taken of the work already carried out in that field. Case

studies would be undertaken in a number of countries representative of the diversity of perceptions and realities within the United Nations in order to assess the impact of the treaty bodies in terms of ratification, administration and enforcement. The key words in that study were effectiveness, results and quality. Achievement of objectives, respect for decisions concerning individual communications, the attention given to reports and the benefits derived therefrom by the victims of human rights violations would be assessed.

56. The study would develop a methodology to evaluate results based on principles such as accountability, transparency of procedures, independence of committee members, representativeness of the system and its accessibility to potential victims.

57. A set of recommendations would be presented to the Office of the High Commissioner for Human Rights by December 1999.

58. Certain long-standing criticisms gave cause to question the system's responsiveness to changing imperatives and needs. The United Nations treaty system should respond effectively to the international community's expectations in regard to quality, accessibility and efficiency. That was the aim of the study, to which the members of the Committee were invited to contribute.

59. Three questions were of particular concern to her: In what fields did the Committee have the greatest need for assistance? How and at what level did the secretariat need to be strengthened? How could a closer link be established between the treaty system and national and regional activities?

60. The CHAIRMAN invited the members of the Committee to comment on the study.

61. Mr. GARVALOV said that the university study by Professors Bayefski and Heyns would certainly be valuable for the work of the Office of the High Commissioner for Human Rights and the treaty bodies. It should emphasize the fact that the reports containing the decisions of the Committee should be submitted directly to the Secretary-General of the United Nations and the Security Council and that, provided that it was given the means and as it had already done in the case of Kosovo in 1993 for example, the Committee was capable of intervening directly within its field of jurisdiction in order to establish a dialogue between opposing parties. It should also highlight the usefulness and effectiveness of the early warning system and the urgent procedure, these being well-established and unique mechanisms the operation of which should be better known to the Secretariat of the Organization.

62. One of the major problems encountered concerned the measures to be taken to ensure that the States parties implemented fully and in an honest and effective manner the provisions of the international instruments that they had ratified, failing which the universality of those instruments would become a meaningless objective. The study should also assess the effectiveness of the policies and methods which the States parties and the treaty bodies were

applying in order to give effect to the international instruments concerning basic rights. It would be very useful to study that question at international seminars or conferences specially devoted to the treaty bodies.

63. Mr. van BOVEN said that one of the problems encountered was the Committee's isolation since it was based at the United Nations Office at Geneva, far from most of the regions and countries with which it was concerned. The Committee should be in closer contact with the latter and, to that end, would obviously need to be allocated additional financial and material resources. Given the important role that national human rights organizations and groups played in the implementation of international human rights instruments, the non-governmental organizations in the developing countries should also be able to contact the Committee as easily as their counterparts in the developed countries, which was rarely the case.

64. He said that the study should accord special attention to the question of follow-up by the States parties on the Committee's recommendations and conclusions in order to reassure everyone that States were honouring their obligations under the international human rights instruments in a serious and effective manner.

65. The CHAIRMAN, speaking in a personal capacity, endorsed Mr. van Boven's comments concerning the need for the Committee to be in closer contact with the regions and countries with which it was concerned. He also thought that third world countries felt that there was a flagrant lack of impartiality in the international arena which, for example, made it possible to applaud some liberation movements while accusing others of terrorism on the basis of biased and partisan political considerations. Those countries could not understand, for example, why some Governments were supporting the Kurdish nationalists in Iraq and opposing those in Turkey while both were defending the same cause of national independence. This led them to believe that the cause of human rights was often manipulated in the interest of undeclared political aims.

66. For his part, he did not think that there was a need to take new measures or adopt new conventions: there was simply a need to ensure that the existing ones were duly implemented, taking care to treat all the members of the international community on an equal footing, which was not currently the case.

67. Mr. DIACONU said that caution should be exercised. He pointed out that the effectiveness of the treaty bodies depended on the impartiality, objectivity and professionalism of the experts of which they consisted. He thought that every recommendation seeking to improve their functioning should highlight those basic requirements, which needed to be maintained. The experts were subjected to all types of pressure from States, governmental organizations and other parties and would certainly not be able to calmly express a candid opinion if they had to meet within the framework of large conferences attended by hundreds of non-governmental organizations and under the scrutiny of the media.

68. He also pointed out that the members of the Committee should not base their opinions on any principle, criterion or concept, even of a humanitarian nature, other than those set forth in the Convention from which their mandate

was derived. In practice, they could insist that States parties not only allow civil society to participate, through national non-governmental organizations, in the preparation of their periodic reports but also ensure that the Committee's conclusions and recommendations concerning those reports be publicized and followed up. That presupposed a desire on the part of the Committee to seek close collaboration, instead of confrontation, with the States parties, bearing in mind the fact that its links with States, being derived solely from the Convention, were very delicate and needed to be carefully preserved.

69. He believed, like Mr. Garvalov, that the main problem lay in the implementation of the international human rights conventions and the need to ensure a better understanding of their aims, methods and application.

70. Mr. RECHETOV drew attention to several defects in the application of international human rights conventions. Some were attributable to the ideological implications of the conventions which, for example, induced the States of the former communist bloc to systematically state in their reports that there were no human rights violations in their territory, the new society having eradicated that type of problem. Likewise, it was not uncommon for some States parties to claim that their democratic tradition secured them against such violations, that they had adequate legislation and that, consequently, they had no problems in that respect.

71. Other States, after long hesitation, finally acceded to a convention but expressed many reservations that were incompatible with the aims of the instrument. Others, while failing to honour their obligations concerning the presentation of periodic reports, curiously derived a certain prestige therefrom at the United Nations or in regional institutions such as the Council of Europe. Finally, some countries doubted the impartiality of the international system for the protection of human rights, which they suspected of favouring some religious sensitivities. It might be possible to draw on legal texts preceding the Shari'a in order to enrich the present system for the protection of human rights and render it more attractive to third world countries.

72. Mr. FERRERO COSTA said that, like everyone else, he was aware of the heavy burden that the obligation to prepare and submit periodic reports to the various treaty bodies placed on a number of States parties. He nevertheless thought that it would be a mistake to combine the reports to the various treaty bodies since the latter should retain their specificity in accordance with their mandate. On the other hand, consideration might be given to the possibility of requesting States parties to present their reports only once every four years. Financial and manpower resources would also need to be allocated to the Committee in order to enable it to apply more effectively the early warning and urgent procedures that were crucial for the proper discharge of its mandate. In addition, there was a need for follow-up on the conclusions and recommendations of the Committee and, to that end, the latter would need to be endowed with a more permanent secretariat and presided over by a chairman vested with greater executive powers.

73. He too felt that the Committee should endeavour to break out of its isolation by, for example, holding meetings at places other than Geneva. Some

of its members could also attend seminars in various parts of the world and take that opportunity to promote a better understanding of the mission and functions of the Committee.

74. He regretted, in particular, that the international community was not taking adequate advantage of the experience and skills of the members of the Committee to defuse grave crises linked to racial problems. However, it had to be acknowledged that the Convention did not contain any provisions to that effect.

75. Mr. de GOUTTES regretted that the Committee had so little time to devote to such a vast subject and hoped that Mrs. Bayefski and Mr. Heyns would make use of the numerous documents pertinent to the study of the United Nations human rights treaty system.

76. With regard to the Committee's needs, he said that more financial resources and support staff were needed to provide good offices or advisory services in countries in difficulty. The Committee also needed increased resources in order to be able to organize training seminars on human rights and the preparation of periodic reports, which would enable the international community to benefit from the largely underutilized experience of its members. Finally, it needed additional support staff in order to improve not only the consideration of the periodic reports submitted to it but also relations between its secretariat and those of national and regional organizations and in order to maintain direct contacts and exchange information with regional organizations, send its experts into the field and enable representatives of those organizations to appear before it. He was aware that each of those proposals would inevitably run up against the usual problems of funding and manpower.

77. The CHAIRMAN thanked Mrs. Bayefski and Mr. Heyns. Speaking in a personal capacity, he invited them to take careful note of article 11 of the Convention, which stipulated that: "If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee", and to ask themselves why it had never been invoked.

78. Mrs. Bayefski and Mr. Heyns withdrew.

The meeting rose at 1.05 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1311th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. SHERIFIS

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fifth to eighth periodic reports of Portugal

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GE.99-40765 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Fifth to eighth periodic reports of Portugal (CERD/C/314/Add.1; HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, Mr. Leitão, Mr. Marrecas Ferreira, Mrs. Dias Nobre, Mrs. Cardoso Ferreira, Mr. Pereira de Santa Clara Gomes and Mr. Calheiros da Gama (Portugal) took places at the Committee table.

2. Mr. LEITÃO (Portugal) explained that although Portugal had not submitted its reports separately and earlier, it had been carrying out sustained action to eliminate all forms of racial discrimination. Portuguese society had changed greatly since 1991, and democracy, dialogue and international and intercultural cooperation had all taken stronger root.

3. Highlighting significant developments in constitutional and ordinary legislation, he said that the latest revision of the Constitution, in 1997, had reformulated the provisions intended to combat racial discrimination and had introduced express provisions to prohibit racist as well as Fascist organizations (art. 46, para. 4). It also stipulated that deputies to the Assembly would lose their seats if they were members of a racist organization. Article 13 already specified that no one could be privileged, given preference, deprived of a right or exempted from a duty on grounds, inter alia, of race, language or place of origin. The constitutional revision ensured speedy and prioritized legal procedures for the protection of individual rights, freedoms and guarantees, including those of the victims of racial discrimination. At the same time, the new right to legal protection against any form of discrimination covered discrimination based on ethnic origin (art. 26, para. 1). Revised article 240 of the Penal Code (racial or religious discrimination) increased the penalties for racial discrimination. It also now prohibited discrimination on the grounds of national or religious origin, in addition to race, colour and ethnic origin, and made the denial of war crimes or crimes against peace and humanity with the intention of inciting to racial or religious discrimination a punishable offence.

4. The creation of the post of High Commissioner for immigration and ethnic minorities and of the Inspectorate-General for Internal Administration had contributed to the effective protection of the rights of victims of racial discrimination. The Inspectorate-General monitored the actions of the security services and forces, and citizens' fundamental rights and freedoms. The two authorities worked together to protect the rights of immigrants and ethnic minorities, an example being a study conducted on improving security force intervention, which had led to the current far-reaching reform in action on behalf of immigrants and ethnic minorities. The Inspectorate-General considered all the complaints transmitted to it by the High Commissioner, and instituted investigations where it deemed necessary. The High Commissioner had brought to the attention of the Procurator-General of the Republic all cases deemed to warrant criminal investigation.

5. As a member of the Citizens' Administration Forum, which encompassed public and private bodies, workers' unions and other social partners, the High Commissioner had proposed a project for the adoption of measures to ensure respect for the rights of immigrant citizens in their dealings with the administration. Anti-racist, human rights and immigrant associations now had increased opportunities to act on behalf of victims by participating in legal proceedings for racially-motivated crimes, unless the victim expressly opposed such participation. Their participation entailed no payment of legal costs.

6. New laws had also been passed on asylum (Law 15/98); on the entry, sojourn and departure of foreigners (Decree Law 244/98) and on foreign workers (Law 20/98), which abolished all restrictions to hiring aliens and contributed to equality of treatment. A new Consultative Council for Immigration Questions (Decree Law 39/93) would begin its work in March 1999, with the participation of immigrant associations.

7. Portugal took an active part in anti-racist initiatives at the international level, such as the Council of Europe's "All different, all equal" campaign, with the collaboration of government bodies, including the Ministry of Justice, and many non-governmental organizations (NGOs). It worked closely with the Council of Europe's European Commission against Racism and Intolerance and the Office of the United Nations High Commissioner for Human Rights and participated actively in the work of the Human Rights Commission. It had likewise taken part in European Union action, such as the establishment of the European Monitoring Centre on Racism and Xenophobia, and the European Year Against Racism. The European Commission's survey on racism and xenophobia in Europe published at the end of that year had found that the Portuguese saw themselves as the least racist people of the European Union, with 58 per cent of them declared non-racists. He was pleased to be able to present the Committee with a copy of the survey, which was intended to serve as a basis for guidelines for future European Union efforts to combat racism. Such results did not blind the Portuguese to verified racist incidents, but gave them the confidence to act effectively to make Portugal an increasingly non-racist society.

8. Although legal measures were necessary to combat racism, they were not sufficient. In order to create a just society in which all citizens, regardless of their race or ethnic origin, could live in harmony, Portugal was placing emphasis on the fight against exclusion and the extension of the concept of citizenship. The constitutional principle of equality of rights between nationals and aliens, specific legislation and the prohibition of racial discrimination all helped to ensure the effective equality of rights. However, the authorities were aware of the need to continue working to ensure a better insertion of Portuguese gypsies into society and the harmonious integration of immigrants. Many thousands of immigrants and members of ethnic minorities had had access to social housing in recent years under special rehousing plans and to a guaranteed minimum wage, and had benefited from various other non-discriminatory integration measures.

9. The Portuguese delegation was sure that the Committee's comments would lead to positive developments in Portuguese action to eliminate all forms of racial discrimination.

10. Mr. GARVALOV (Country Rapporteur) thanked the High Commissioner for immigration and ethnic minorities for his statement, which had clarified several important points, and commended the high quality of the periodic report. Significantly, the report included self-criticism, giving a clearer picture of Portugal's position vis-à-vis the Convention. Some of it appeared to be more relevant to other treaty bodies, but Part II related more specifically to implementation of the Convention.

11. Even the newly revised Constitution still concentrated on discrimination in general. Several articles enshrined the principles of equality and non-discrimination, including that between citizens and non-citizens, but the only specific examples given were protection of workers and equality of education. Racial discrimination was not specifically prohibited, since racism was not defined separately. It was logical, given Portugal's political past, that racism was placed within the context of the Fascist ideology, but racial discrimination as defined in the Convention was a much broader concept. Comparable comments had been in the 1998 report of the Council of Europe's European Commission against Racism and Intolerance (ECRI).

12. The core document (HRI/CORE/1/Add.20) raised questions regarding the applicability of the Convention in Portuguese domestic law, stating as it did that article 8 of the Constitution provided for direct applicability "insofar as this is expressly provided for in the relevant constitutive treaties", whereas the Convention itself did not specifically include any such provisions.

13. With regard to Portugal's demographic composition, paragraph 16 spoke of the "insertion" of gypsies into Portuguese society, whereas references to foreign immigrants spoke of "integration". In English, the two words were not synonymous. Although the Portuguese legal system did not permit reference to race, paragraph 16, in specifying that the gypsies had been in Portugal since the fifteenth century, made it clear that Portugal recognized their different ethnic origin. According to the ECRI report the Roma or gypsy community represented a major victim group in racist incidents, followed by black people from Portuguese-speaking countries of Africa. Yet that report stated that the Constitutional Court had, to date, dealt with the question of racial discrimination only with respect to members of the Romany community and referred also to a decision of the Constitutional Commission concerning a decree of 1920 which provided for close supervision of Roma/gypsies in order to prevent "frequent anti-social activities". More clarification was required on that point and its meaning, since it gave the impression that the Roma were subject to special attention by the Constitutional Court. Commission on Human Rights document E/CN.4/1998/77, effectively a reply by the Portuguese Government, referred to the "Working Group on Gypsy Equality and Social Integration", referred to in the report as the Working Group for the Equality and Insertion of Gypsies, and acknowledged that the Roma/gypsy communities in Portugal suffered from "social, economic, cultural and even political exclusion" but did not recognize any racial discrimination against them. It also described the steps being taken to promote equality and integration including a national programme against poverty and the creation of an educational guide covering the entire curriculum, with due regard to the gypsy culture. Although those measures were very commendable, concerns about racial discrimination against Roma in Portugal remained.

14. Paragraph 20 acknowledged that Portugal was "a multi-ethnic and multiracial society", which conflicted with the statement that no reference to race was permitted. Although paragraph 19 stated that the Constitution prohibited the "conducting of surveys on the racial or ethnic component of the population", it should be pointed out that the United Nations Population Commission recommendation that the category of "race" should be optional in censuses concerned only the methodology of State census-taking. None of the optional categories could be a legal barrier for a State to gather information on the demographic composition of its population. Moreover, in the definition of racial discrimination, in article 1.1 of the Convention, race was only one component, the others being colour, descent, or national or ethnic origin; the terms "descent" or "national or ethnic origin" could not, therefore, be substituted for the term "race".

15. The report mentioned no ethnic group other than gypsies. Table 1 listed the foreign population resident in Portugal, but did not specify whether they were permanent or temporary residents. He felt that the separate grouping of "Europe" and "other countries of Europe" was divisive; such categorization bordered on discrimination. Some clarification of the statistics was needed.

16. He asked the Portuguese delegation to comment on the assertion in the Minority Rights Group International's World Directory of Minorities 1997 that in 1992 restrictions had been imposed on the entry into Portugal of persons from its former colonies, specifically Angola, Guinea-Bissau, Cape Verde and Mozambique. The Minority Rights Group International also maintained that although Portugal had granted a certain degree of self-government to the islands of Madeira and the Azores, both those territories continued to press for greater autonomy and were critical of Lisbon's rule. The Committee would like to know more about Portugal's policy with regard to such minorities. How did the Portuguese Government define "national minorities", and what were those national minorities? Portugal had signed the Council of Europe's Framework Convention for the Protection of National Minorities; to which ethnic groups or national minorities did Portugal apply that instrument?

17. Concerning paragraph 27 of the report, according to which the strengthening of European identity mentioned in paragraph 5 of article 7 of the new text of the Constitution did not affect non-European citizens, who retained all the rights recognized to them by a democratic society, he asked how that was ensured in practice. He was pleased to learn that, under the Constitution, stateless persons and European Union citizens enjoyed the same rights as Portuguese citizens.

18. Paragraphs 40 to 52 were of great importance, dealing as they did with a number of incidents of racial violence in Portugal perpetrated in recent years by skinheads against blacks, foreigners and Roma. It was to the credit of the State party that it had honestly presented such information in the report. The establishment of the Office of the High Commissioner for Immigration and the Ethnic Minorities was a commendable initiative.

19. Turning to article 2 of the Convention, he summarized the main points made in paragraphs 67 to 90 and commented in particular on a case in which the Administrative Court of First Instance of Porto had found to be null and void the regulations of the municipality of Vila do Conde requiring all gypsies

without official residence to report their arrival and to leave within eight days (paras. 85-88). The case was interesting in that in its ruling, the Court had not referred to the problem of Roma as such, but to the invalidity of the administrative act. He would have expected the Court to take up the substance of the issue. The Committee commended the Portuguese Supreme Court for revoking the decision of the District Court of Lamego, which had increased a sentence for a gypsy woman convicted of drug trafficking because gypsies supposedly had a natural propensity to engage in drug trafficking (para. 89).

20. Regarding the State party's implementation of article 4, he again drew attention to the absence of specific legislation prohibiting racial discrimination. Article 189 of the Criminal Code punished attempts to destroy a national, ethnic, religious or social group, and although it was similar to the provisions of the Convention, it did not, as required under article 4 (b) of that instrument, declare illegal and prohibit organizations which made such attempts. Law No. 28/1982 did, however, establish the competence of the Constitutional Court to declare that an organization had a Fascist ideology and to prohibit it. That was a positive measure, and it was to be hoped that the Constitutional Court would also have competence to prohibit racist organizations and groups, as specified in article 4 (b) of the Convention.

21. Concerning the case of the Fascist organization "National Action Movement" (MAN) discussed in paragraphs 100 to 193, he noted that after MAN had disbanded itself, the Constitutional Court had ruled that as that organization had ceased to exist, there had no longer been any reason to declare it to be Fascist. Could the Portuguese delegation explain why the Constitutional Court should not have ruled that during its period of existence, MAN had in fact been a Fascist organization?

22. Paragraphs 106 to 234 provided a wealth of information on legal measures to prevent and combat racial discrimination. Unfortunately, virtually nothing was said about actual administrative practice, and no examples were given of case law. The Committee would have liked to see information about specific cases in Portuguese courts, sentences, etc.

23. The State party had taken many steps to comply with the provisions of article 7. He noted with satisfaction that in recent years Portugal had launched a number of practical initiatives in the area of education and vocational training to promote the social and professional integration of immigrants and persons belonging to ethnic and linguistic minorities.

24. Referring to the question of Macao, he observed that the majority of the population was Chinese-speaking, yet official documents and decisions were produced in the Portuguese language only. That put the majority population at a serious disadvantage. Furthermore, despite guarantees of equality in the Constitution and in Portuguese labour legislation, women still did not receive equal pay for equal work. As the majority of women in Macao were of Chinese origin and their mother tongue was Chinese, that was tantamount to racial discrimination. In closing, he would like to know how well the people of Macao were informed about the provisions of the Convention.

25. Mr. VALENCIA RODRIGUEZ, commending the Portuguese delegation for its presentation, referred first to the statement in paragraph 19 of the periodic report that problems of racial discrimination arose essentially within the country and were not connected with nationality. More information was needed on that point in order to understand the reason for past xenophobic incidents.

26. Paragraphs 20 to 22 spoke of the effort to legalize the situation of clandestine immigrants, an initiative which the Committee applauded. Could the Portuguese delegation describe how such persons applied to have their papers brought into order? What percentage of applications submitted had actually been approved?

27. Paragraph 36 stated that situations connected with the right to asylum, expulsion and extradition could give rise to discriminatory treatment or behaviour. Could specific examples of incidents be given? He also asked for information on paragraphs 187 and 195 concerning cases in which religion and conscientious objection had resulted in racial discrimination.

28. Regarding the situation of the Roma, he would like to know more about the group responsible for monitoring the application of measures for the integration of gypsies, which had replaced the Working Group referred to earlier (paras. 56 and 57).

29. He commended the Portuguese Government for the detailed information given on serious cases of racial discrimination and hoped that it would continue to inform the Committee of measures taken to prevent and punish such acts. The Committee would also appreciate receiving a copy of the exact wording of article 240 of the Penal Code, which dealt specifically with racial discrimination.

30. According to paragraph 98, article 160 (1) of the Constitution sanctioned deputies who were members of Fascist organizations. He would have thought that a universal prohibition of such involvement would have been sufficient. Why was it necessary to make special reference to deputies?

31. The provisions of article 46 (1) of the Constitution prohibiting armed associations of a military, militarized or paramilitary type and racist organizations or organizations which followed a Fascist ideology were restrictive and did not cover all organizations which promoted or incited racial discrimination, as required under article 4 of the Convention.

32. As for the disbanding of the "National Action Movement", which was discussed in paragraphs 100 to 103, that body was clearly racist. Judging by the information received, it appeared that no punishment had been imposed on any member of that organization, although its very existence had constituted an offence. It seemed that the authorities were more concerned about acts of violence than acts of discrimination.

33. The Ombudsman's recommendation in connection with the orders to demolish Roma dwellings in Vila Verde (para. 105) was to be commended. The Committee looked forward to learning how the courts ruled on the case, which apparently was still pending.

34. Turning to the implementation of articles 5, 6 and 7 of the Convention, he noted that foreigners illegally on the national territory who had managed to enter without being detained could only be detained for expulsion proceedings on a court warrant (para. 168). Did that encourage foreigners who had entered illegally to try to avoid being detained for the first 48 hours so as to be able to benefit from such proceedings?

35. On the implementation of article 6 of the Convention, more specific information should have been provided on how Portugal met the requirement regarding access by victims of racial discrimination to courts of justice or other competent bodies and how adequate compensation was paid.

36. In respect of article 7, the description of educational programmes and efforts to provide schooling for all children regardless of ethnic or national origin was most interesting; unfortunately, nothing was said about other aspects of that article, namely culture and information.

37. Finally, the Portuguese Government should do more to publicize the content of the Convention, its country report and the Committee's concluding observations.

38. Mr. DIACONU, while praising the quality of the report, said that the description of the Portuguese legal system belonged more appropriately in the core document. He was pleased to note that the public authorities seemed to be motivated in many cases by a firm resolve to stamp out and punish acts of racial discrimination. Perpetrators of violent acts were severely punished, for example by an 18-year prison sentence. A local authority decision to expel the Roma community from Vila Verde had been quashed. On the other hand, a court had decided to impose a stiffer penalty on a Roma woman on the grounds that drug trafficking was endemic in the Roma community. Although the Supreme Court had set aside the judgement, the incident demonstrated the need for better training of judges, law enforcement officers and others involved in such cases.

39. He welcomed the establishment of an Interdepartmental Commission for the Integration of Immigrants and Ethnic Minorities and asked whether its membership included representatives of immigrants and minorities and whether there was some arrangement for consulting such groups. He commended the provision of schooling facilities for children from immigrant and minority families and asked whether the curriculum included tuition in their mother tongue and culture.

40. Article 3 of the Convention dealt not only with apartheid but also with racial and ethnic segregation. Had any trends towards segregation been noted in Portugal, particularly in urban areas, and what action was being taken to prevent such phenomena?

41. He welcomed the training of mediators to facilitate dialogue between the central and local authorities and Roma communities. The Roma were a disadvantaged group needing careful attention. He also welcomed the measures to regularize the status of foreigners residing in Portugal, thereby giving them access to a wide range of economic and social rights.

42. He understood that the naturalization regime in Portugal discriminated between Portuguese-speakers and others, fewer years of residence in Portugal being required for the former. He drew attention in that connection to article 1, paragraph 3, of the Convention which stipulated that naturalization provisions should not discriminate against any particular nationality. Moreover, whereas Portuguese-speaking immigrants were eligible to vote in municipal elections after two years of residence, immigrants from other countries were eligible only after three years and provided that a reciprocal arrangement for Portuguese citizens existed in their country of origin. He stressed that the principle of reciprocity was not applicable to human rights.

43. He asked whether the Convention took precedence over domestic legislation and whether it could be invoked directly before the Portuguese courts.

44. Mr. de GOUTTES was pleased to note that the delegation was headed by the High Commissioner for Immigration and Ethnic Minorities, a key player in the anti-racist struggle in Portugal. The Committee would be interested to hear a description of what his work involved in practice. The report was full of useful information, although some details belonged in the core document or Portugal's report to the Human Rights Committee. The Committee was particularly pleased with the detailed demographic data and the frank description of incidents of racial discrimination against blacks and Roma and of the role of racist groups such as neo-Nazis and skinheads.

45. Paragraphs 80 to 90 of the report provided a particularly interesting and comprehensive review of case law relating to minorities and racial discrimination. He welcomed the 1994 Supreme Court condemnation of a judgement to the effect that the Roma had a natural propensity to engage in drug trafficking, which was a disheartening indication of the stereotypes that persisted among certain judges.

46. The 1992 and 1996 campaigns to regularize the status of illegal immigrants addressed a highly sensitive issue, not only for Portugal. To what extent had they achieved the successful integration of members of the target group? Were there any plans for a third campaign?

47. The new Penal Code referred to in paragraph 97 of the report seemed to fulfil the requirements of article 4 of the Convention with respect to the prosecution of acts of racial discrimination. However, he wished to know whether the offence of dissemination of racist ideas and that of denial of services, property or access to public places on racist or ethnic grounds were punishable under the Code.

48. He would appreciate additional information concerning the mediators responsible for ensuring liaison between the Roma community and public and private institutions mentioned in paragraph 234 of the report.

49. During the Committee's consideration of Portugal's previous report in 1991, the delegation had said that Portugal would contemplate making the declaration under article 14 of the Convention. What was the present situation? Of the 27 States parties that had made the declaration, 16 European States had also recognized the individual petition

procedure before the European Court of Human Rights. The two mechanisms were cumulative since the scope of the Convention was broader in terms of non-discrimination on racial or ethnic grounds than the European Convention on Human Rights.

50. Mr. Sherifis took the Chair.

51. Mr. LECHUGA HEVIA praised the report for its frank admission of Portugal's problems in ensuring full compliance with the Convention.

52. He, too, would like to know what practical measures had been taken by the group that had replace the Working Group referred to in paragraph 16 of the report.

53. Paragraph 25 of the report referred to a minority language, Mirandês, spoken in north-eastern Portugal. He was interested in hearing more about its origins and whether it was spoken by an ethnic minority.

54. He would also appreciate more recent information on the skinhead phenomenon and the extent of skinhead influence in Portuguese society.

55. According to a report on the activities of the High Commissioner for Immigration and Ethnic Minorities, discrimination against the Roma community was more serious in rural areas. Could the High Commissioner account for that phenomenon? Was it related to levels of education or literacy rates?

56. He asked whether there were separate statistics for the Roma indicating, for example, level of education, access to health facilities, morbidity rates and average life expectancy.

57. According to the European Commission against Racism and Intolerance, a Portuguese newspaper had published a report on the murder of a taxi driver in terms likely to arouse racial hatred. The Ethical Council of Portuguese Journalists had criticized the newspaper's attitude. Under article 4 of the Convention, the newspaper in question should have been punished for the dissemination of racist ideas.

58. Mr. YUTZIS said he was particularly pleased with the detailed demographic data and the review of relevant case law presented in the Portuguese report. He also commended the frank recognition of the existence of certain "conflict scenarios" - situations of tension affecting minority and ethnic groups. The question arose whether those scenarios were exceptional or symptoms of a deeper malaise. He viewed the case of the Roma as a symptom rather than an exception and the report itself had focused on the community's problems. The image of a community with an innate propensity to engage in drug trafficking was striking and conducive to its "criminalization" by the general public, which considered it permissible to demolish the community's housing. According to the NGO SOS Racismo, the local population in Vila Verde had set up an armed people's militia and had barricaded the entrance to the Roma camp, searching everyone who approached the area. He asked the delegation to comment on the allegation.

59. Paragraphs 85 and 86 of the report described the behaviour of the municipality of Vila do Conde, which had persisted in issuing regulations directed against the Roma despite the disapproval of the Attorney-General and the Ombudsman. According to SOS Racismo, the authorities involved had never been punished. The NGO also referred to a questionnaire published in the magazine Visão in 1996, according to which 32 per cent of student respondents wished to expel the gypsies from Portugal. Another questionnaire published in the newspaper Público in 1998 had found that 27 per cent of young people in the 13 to 18 age-group would "feel bad" if their neighbour was a gypsy. SOS Racismo concluded that a variety of factors contributed to the formation of the public image of the "gypsy-trafficker", an image that legitimized the persecution of a community that was no less "Portuguese" than the rest of the population. He asked the delegation to comment on those findings.

60. Paragraph 210 of the report claimed that there was no limitation on the access of foreign nationals to employment in Portugal. According to SOS Racismo, Decree-Law No. 99/77 of 17 March 1977 required that at least 90 per cent of the staff of certain companies should be Portuguese, a provision which had allegedly led to the large-scale exclusion and exploitation of foreign workers. According to paragraph 212 of the report, article 14 of the Constitution established the principle of equality of housing for non-nationals and nationals. But according to SOS Racismo, Decree-Law No. 797/76 of 6 November 1976 confined access to low-cost housing to Portuguese citizens, so that the majority of immigrants were forced to live in prefabricated units. He would welcome the delegation's comments on those allegations.

61. Mr. van BOVEN said that he would have expected to find some information on Macao in Portugal's report, following the Committee's recommendation (in its report to the General Assembly, A/53/18, para. 493 (c)) that States parties should provide information on Non-Self-Governing Territories. The report did refer to East Timor, but principally with regard to the reception of Timorese people in Portugal. However, although Portugal was still officially the colonial Power in East Timor, it was clearly impossible for it to report on a territory that was de facto under another Power.

62. Portugal had been frank enough to recognize that problems existed: the first step towards solving problems was to recognize them. The incidents referred to in paragraphs 41-52 were perhaps only the tip of the iceberg, however, and he wondered whether the judiciary and law enforcement officials were sufficiently alert to the problems to prosecute when incidents occurred. The authorities in most countries were lax in such matters: did Portugal have any policy to increase the vigilance of such officials?

63. Portugal had co-sponsored a draft resolution to the General Assembly strongly urging States parties "to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee (A/C.3/53/L.18/Rev.1, para. 13). He hoped that, if it had not yet done so, Portugal itself would soon formally accept that amendment. He welcomed the information in the report of the European Commission against Racism and Intolerance that Portugal was - or had been in 1997 - preparing to make a draft declaration under article 14, and asked whether that was indeed the case.

64. With regard to article 3, he requested further information concerning trends in the segregation of, for example, the Roma, particularly in relation to housing and education, and concerning Portugal's policy in that regard.

65. According to the report of the European Commission against Racism and Intolerance (para. 19), the experience of racism in police units had made it clear that training measures should be taken to enable the police to assume their responsibilities fully. Since that was also the thrust of the Committee's General Recommendation XIII of 1993, he would welcome information concerning the development of such training in Portugal.

66. The CHAIRMAN, speaking as a member of the Committee, said that it was clear that Portugal was making great efforts to face up to phenomena of racial discrimination, racism and xenophobia. As mentioned in paragraph 53 of its periodic report, a number of steps had been taken to deal with specific problems. He drew attention, however, to the Committee's General Recommendation XVII, on the establishment of national institutions to facilitate the implementation of the Convention, and he wondered whether the delegation had considered establishing such an institution. Publicizing the contents of the Convention for the benefit both of officials and of the general public was another way in which Portugal could achieve the goals it had described in its report.

The meeting was suspended at 17.33 and resumed at 17.42.

67. Mr. MARRECAS FERREIRA (Portugal) said that the Convention was directly applicable in Portugal's legal order, but under article 8.2 of the Constitution, which applied to duly ratified international conventions, rather than article 8.3, which had been drafted with European Community legislation in mind. Moreover, all international legal instruments were directly applicable under article 16.1 of the Constitution. International treaties took precedence over all domestic legal instruments.

68. Mr. LEITÃO (Portugal) said that great importance was attached in the training of law enforcement officials to the subject of the immigrant and gypsy communities. It was important to establish a dialogue between those groups and law enforcement officials and he himself had taken part in discussions where the various parties had worked together to solve problems. In-service courses were an important element of police training, and distance learning materials had been developed to enable the police nationwide to take part. The quality of police work was also given high priority, and officials' performance of their duties was monitored from a human rights standpoint by a Government-appointed inspector.

69. Responding to the question why the word "insertion" was applied to the gypsies as opposed to the word "integration" for immigrants, he said that "insertion", in Portuguese, conveyed more adequately the sense of integrating a group while fully respecting its cultural characteristics. Some members of the Council of Ministers, when discussing the establishment of the Working Group for the Equality and Insertion of Gypsies, had felt that it was very important to emphasize that aspect of their integration. The Working Group had been set up to analyse the situation of the gypsies with a view to developing specific measures to protect their rights and to improve their

situation generally. It recognized that the gypsies had for some time been the victims of social exclusion and that it was necessary to improve their level of participation in society. Members of the Group had conducted visits and held discussions with the gypsies, and had found that steps needed to be taken, in particular, with regard to education, an area in which the Working Group had successfully involved the Ombudsman; the development of low-cost housing with due regard for the cultural characteristics of a group that had, until recently, been nomadic; and training for work, an area in which a variety of projects were under way, some of them originally developed for the general population and others specifically geared to gypsy needs.

70. Direct dialogue with local authorities at all levels had proved very important in establishing a good rapport with the gypsy community. Universities and social research institutes had presented proposals for studies aimed at improving the work of integrating the gypsies. Lastly, the Ministry of Culture had supported a travelling exhibition demonstrating the significance of gypsy culture for Portuguese culture.

The meeting rose at 6 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1312th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU
(Vice-Chairman)

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fifth, sixth, seventh and eighth periodic reports of Portugal (continued)

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES

Democratic Republic of the Congo

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Fifth, sixth, seventh and eighth periodic reports of Portugal (continued) (CERD/C/314/Add.1; HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, the members of the Portuguese delegation took places at the Committee table.

2. The CHAIRMAN invited the Portuguese delegation to reply to the questions asked by the members of the Committee.

3. Mr. LEITÃO (Portugal) thanked the members of the Committee for their comments and questions to which his delegation would endeavour to respond and which would be transmitted to his Government.

4. Mr. MARRECAS FERREIRA (Portugal), reverting to the criticisms by the Country Rapporteur of the fact that the Constitution of Portugal did not expressly prohibit racial discrimination, recalled that article 13 of the Constitution, even if it was worded in less explicit terms than article 1 of the Convention, did establish the general principle of non-discrimination and equality by providing that "no one may be privileged, favoured, disadvantaged, deprived of a right or exempted from a duty on account [inter alia] of his ancestry, race, language, territory of origin ...". Moreover, since article 16.1 of the Constitution prescribed that fundamental rights arising from all instruments of international law had constitutional value, the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination had been automatically incorporated into Portuguese fundamental law.

5. As for the absence of any reference to race in the analysis of the demographic composition of the population of Portugal, he recalled that such a reference was optional according to United Nations criteria. Because of the country's multiracial tradition and the absence of racial prejudices - which explained, for instance, how the Portuguese had been so easily able to settle in Brazil - it would be deemed improper to establish statistics in terms of the race, religion or, indeed, the politics of the persons concerned. That was the reason why Portugal did not possess any quantified data for those characteristics.

6. The concept of a minority was another sensitive one, and even the Framework Convention for the Protection of National Minorities of the Council of Europe did not expressly define it. The various foreigners living in Portugal were not regarded as forming minorities, even if there might be some occasional friction with the population of Portuguese stock. On the whole, it could be said that Portuguese society was homogeneous, apart from the Gypsy community which had deliberately remained isolated from the rest of the population for several centuries in order to protect its culture and traditions and, consequently, was treated separately in the report.

7. The inhabitants of the Azores and Madeira were in no way ethnic minorities, any more than the Corsicans were vis-à-vis the French. They were Portuguese through and through to whom a certain autonomy had been granted because of their residence on islands and their geographical distance from the mainland.

8. The right to equal treatment before the courts was guaranteed and, if case histories revealed that Gypsies or Blacks were often victims of injustice, those phenomena were still marginal and could not be attributed to a generalized racist attitude. The judges did their utmost to redress the damage suffered and judicial decisions often caused the law to evolve. Thus, a new law adopted in 1996 extended the right to legal aid to all foreigners, including asylum seekers that had entered the country but had not yet been regularized, who could henceforth make use of it for the purposes of their regularization procedure.

9. Judicial decisions contributed also to the application of the international instruments, including the conventions on the elimination of all forms of discrimination. The Constitutional Commission had, for example, declared contrary to the Constitution a regulation of the National Republican Guard which allowed nomads' caravans to be searched. Such caravans were henceforth to be regarded as homes rather than vehicles and could thus be inspected only with a search warrant.

10. When Gypsies were involved in conflicts with town councils or in law suits, there was a tendency for the general public and the press to side with them. The decision by the Lamego District Court, which had included in the reasons for its verdict in a drug-trafficking case the statement that "Gypsies have a natural tendency to drug trafficking" and had made it an aggravating circumstance, aroused a veritable outcry in the press. The part of the decision concerning the aggravating circumstance had been quashed by the Supreme Court.

11. Likewise, some vigilantes who had attacked a community of Gypsies suspected of trafficking in the Vila Verde area had been sentenced for "terrorist association". That meant that there was no segregation with respect to the Gypsy minority.

12. Incitement to racial hatred and violence, not to mention violent acts themselves, were severely punished and the neo-fascist "National Action Movement" (MAN), linked to the skinheads, had had to cease its activities. Organized racist propaganda and participation, including financial participation, in activities of that kind, as well as the circulation of racist writings or statements by other means of communication; the denial of war crimes and crimes against peace and humanity and slander or insults of a racist character were punishable by up to eight years' imprisonment under article 240, paragraphs 1 and 2, of the Criminal Code.

13. In addition, article 160, paragraph 1, of the Constitution of Portugal made it possible to lift the parliamentary immunity of deputies who made racist statements and to cancel their mandate.

14. Lastly, as far as the foreigners' vote was concerned, his delegation wished to reply to the Committee's comments that there was discrimination behind the fact that not all foreigners were able to vote or be candidates in municipal elections. In fact, Portugal applied in that regard the principle of reciprocity whereby it granted the right to vote to citizens of countries which themselves granted the right to vote to Portuguese citizens. That principle applied to all the countries in the world and, far from being discriminatory, gave evidence rather of an attitude of openness and generosity.

15. Lastly, he wished to add an explanatory comment concerning the article with a "racist connotation" which had been written by a Portuguese journalist after the murder of a taxi driver and which was denounced in a document of the European Commission against Racism and Intolerance. Although the tone of the article and the situation resulting therefrom were unpleasant, it could not be said that there had been incitement to racial hatred in that instance and, moreover, the journalist in question had not been prosecuted.

16. Mrs. DIAS NOBRE (Portugal), speaking on the subject of the campaigns for the extraordinary regularization of clandestine immigrants (para. 26 of the report), said that they had been undertaken, on the one hand, to combat discrimination and the abuses to which it led and, on the other, to integrate aliens who were in an irregular situation. Carrying out those campaigns had necessitated much energy and the collaboration of the Aliens and Frontiers Department, the High Commissioner for Immigration and Ethnic Minorities, embassies, immigrants' associations and local authorities.

17. From the organizational point of view, information and training activities concerning the legislation and the necessary formalities had been carried out, reception centres set up with due regard for the districts in which the people concerned were concentrated and flying squads created to go to those who could not visit the centres, all such operations with the active participation of the immigrants' associations.

18. Of the 35,082 applications submitted, 31,117 had been accepted and had resulted in the issue of residence permits. Those de isions had been taken by the National Commission for Extraordinary Regularization (CNRE), made up of various representatives of ministries, of the immigrants and of ethnic minorities. The persons w ose applications were rejected because of the criteria for exclusion prov ded for in the legislation had a right of appeal.

19. No new regularization campaigns were envisaged but a recently adopted decree-law incorporated the principle of family reunion and of strengthening the guarantees given to aliens, facilitated the procedure for acquiring a residence permit and included a provision whereby residence permits could be granted, exceptionally, for humanitarian reasons. That procedure came under the Ministry of the Interior.

20. Mrs. CARDOSO FERREIRA (Portugal) said, with regard to the question of Gypsy mediators, that their duty was to facilitate the integration of Gypsies by encouraging relationships between them and the rest of the population. In order to do so, they had to have a good knowledge of the society into which they were fitting and a capacity for communication, particularly with the

various professional people working in education, and be able to promote an intercultural dialogue. Within the framework of their activities, they were required to participate in school staff meetings and educational projects and to approach families when certain pupils played truant in order to convince them of the value of school attendance, etc. They were given a 1,000-hour training course by the Ministry of Education.

21. Mr. LEITÃO (Portugal), supplying information concerning the mandate of the High Commissioner for Immigration and Ethnic Minorities (para. 29) - a post which had been entrusted to him, said that the office had been established in January 1996 to harmonize the policies of the various departments of State concerned with questions relating to immigrants or ethnic minorities.

22. All action was based on dialogue with the people concerned - immigrants, ethnic minorities, Gypsies and others - or with their representatives.

23. The office of the High Commissioner for Immigration and Ethnic Minorities had given support in the following areas, among others: adoption of new legislative measures, organization of the process of regularizing immigrants, preparation of the report on Gypsy equality and integration, creation of innovative projects such as, for example, training young immigrants in computer science or helping them to integrate through sport, which developed initiative and tolerance, supplying information and advice to immigrants, organizing a Gypsy national encounter and establishing an Advisory Council for immigration questions. In addition, a new project had been launched, with the cooperation of the Employment Institute, to stimulate the vocational training of Gypsies, young immigrants or young nationals belonging to ethnic minorities.

24. The High Commissioner for Immigration and Ethnic Minorities had also the task of monitoring the activities of the various administrative departments. For example, he had to be informed of any deportation order or any refusal to renew a residence permit. In some cases, he had succeeded in having a negative decision reviewed. He proposed measures to the Government, such as the establishment of the Working Group on the Equality and Insertion of the Gypsies, requested that inquiries be opened, as in cases where vigilantes were involved, and cooperated with the General Inspectorate of Home Administration.

25. Replying to other questions, he said that Mirandês was a language that had been officially recognized since January 1999 as forming part of the cultural heritage of Portugal, that the decree-law of March 1997 had been replaced in May 1998 by the Employment of Aliens Act which no longer imposed any quota for the employment of foreigners and that, as far as social housing was concerned, although the decree-law of 1976 was still in force, foreigners could currently receive housing assistance. The High Commissioner for Immigration and Ethnic Minorities had, incidentally, requested a review of that decree-law.

26. Mr. PEREIRA GOMES (Portugal) said, with respect to the declaration provided for in article 14 of the Convention, that he could confirm that the decision to make that declaration had already been taken and that the

formality would shortly be notified to the Secretary-General of the United Nations. Portugal also intended to ratify the amendment to article 8, paragraph 6, of the Convention.

27. With respect to the status of Macao and East Timor, he said that, according to international law, the two territories were under Portuguese administration.

28. On 20 December 1999, Macao would become a special administrative region of the People's Republic of China and would cease to be administered by Portugal. The People's Republic of China had pledged itself to respect the principles in force in Macao on 20 December 1999, particularly the rights and freedoms of the citizens, included in the fundamental law of the special administrative region of Macao, adopted in 1993. In that connection, the International Convention on the Elimination of All Forms of Racial Discrimination had not been applied in the territory because of its special status. However, he had been informed that his own country and the People's Republic of China had agreed to apply the Convention to Macao and his Government was currently preparing a declaration extending the scope of the Convention to the territory. Moreover, the special status of Macao was not an obstacle to the application in the territory of the Constitution of Portugal in the matter of fundamental rights.

29. As for East Timor, despite the invasion and occupation of the territory by the Indonesian army in December 1975 and the resultant inability of his Government to exercise its administrative authority, Portugal was still conscious of its duties towards the Timorese people, and was doing its utmost to ensure that that people's right to self-determination became a reality.

30. The CHAIRMAN invited the members of the Committee to conclude their consideration of the report of Portugal.

31. First, however, speaking in his personal capacity on the subject of the next three reports to be considered concerning African countries, he stressed how regrettable it was that so little time had been allotted to consideration of the situation in those countries as compared with others, particularly European ones, when very serious events, such as genocides or gross and systematic violations of human rights, were occurring there. In fact, those countries were not being given enough attention.

32. Mr. FERRERO COSTA said that situations of gross violations of human rights in Africa, and in other regions such as Kosovo and Kurdistan, undoubtedly deserved the Committee's full attention. That did not mean however, that the Committee should ignore racist and xenophobic actions occurring in Europe, in employment for instance or against immigrants, on the grounds that they were less serious than elsewhere. According to its mandate, it was obliged to examine situations coming within its competence and occurring in any country whatsoever, whatever the region it belonged to, taking carefully into account circumstances connected with the level of development, history and economy of each of them, whether it was a matter of discrimination against indigenous people, genocide or much less serious actions.

33. The CHAIRMAN said that there was no substantive disagreement between himself and Mr. Ferrero Costa. He was not advocating a refusal to give certain European countries the attention their situations required but was concerned that regions other than Europe, and particularly Africa, should receive equal attention from the Committee.

34. Mr. YUTZIS said he appreciated the analyses made by the delegation of Portugal but he did not necessarily share the conclusions. He noted a certain ambiguity: on the one hand, the authorities had adopted dissuasive measures against attitudes leading to racist acts or violence while, on the other, there was a certain increase in the number of offences. Contrary to the views of the delegation, he was inclined to see there the symptoms of a deep-seated malaise, but only the following report would enable the Committee to know what was really the situation.

35. He saw from the report (para. 166) that foreigners in an irregular situation awaiting expulsion or return and asylum seekers were installed in temporary reception centres. He wished to know where those centres were located, how many of them there were and by what administrative provisions they were governed. He would also like to know more about the opinion polls that had been mentioned.

36. Mr. Diaconu, Vice-Chairman, took the Chair.

37. Mr. GARVALOV (Country Rapporteur for Portugal) thanked the delegation of Portugal for the precise and detailed answers it had given to the questions asked by the members of the Committee. He welcomed the resumption of the dialogue with Portugal which, after a break of about eight years, had been taken up again in a particularly constructive way. In particular, the delegation had given the Committee clarifications which had dispelled some misunderstandings regarding matters of concern.

38. It had thus appeared that Portugal seemed to have accepted the fact that it had a multiracial and multi-ethnic society. The delegation had not denied the fact that acts of racist violence occurred in Portugal, mainly affecting Gypsies and foreigners, but it had very clearly indicated that the Convention could be invoked directly before the Portuguese courts. Unlike the representatives of other States parties who were also members of the European Union, the delegation of Portugal had set out clearly its Government's views on the Framework Convention for the Protection of National Minorities, an instrument that Portugal had not ratified. The conclusions of the Committee concerning the periodic report of Portugal would, he was sure, reflect the constructive nature of the dialogue that had taken place during its examination.

39. Mr. LEITÃO (Portugal) said that, at the time of the consideration of Portugal's next periodic report, his authorities would deal with the questions to which the delegation had not been able to supply satisfactory answers.

40. Mr. Aboul-Nasr resumed the Chair.

41. The CHAIRMAN thanked Mr. Garvalov for his comments and congratulated the delegation of Portugal on the presentation of its report.

42. Mr. LEITÃO (Portugal) thanked the members of the Committee for their questions and comments and said that the dialogue they had begun with his delegation would certainly contribute to the effective implementation of the Convention in the Portuguese legal order and would assist the preparation of Portugal's next periodic report.

43. The CHAIRMAN said that the Committee had thus completed its consideration of the fifth to eighth periodic reports of Portugal.

44. The Portuguese delegation withdrew.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (continued)

[45.] Democratic Republic of the Congo

46. The CHAIRMAN said that the Committee would consider the situation in the territory of the Democratic Republic of the Congo in the absence of representatives of the State party. He invited the Secretary of the Committee to give an account of the steps taken by the Office of the High Commissioner for Human Rights (OHCHR) to secure the presence of such a representative.

47. Mr. HUSBANDS (Secretary of the Committee) said that the OHCHR had sent many letters and made many telephone calls, all without any response, to the Permanent Mission at Geneva of the Democratic Republic of the Congo in order to invite that State to send a representative to participate in the consideration of the situation in its territory for the purposes of the Convention. Further approaches to the Permanent Mission of the Democratic Republic of the Congo in New York, through the United Nations Secretariat, had been no more successful.

48. Mr. VALENCIA RODRIGUEZ (Country Rapporteur for the Democratic Republic of the Congo) said that the Committee, which had been keeping the situation in the Democratic Republic of the Congo under review for a number of years under the early warning measures and urgent action procedures because of the serious and persistent violations of the Convention occurring there, had come to the conclusion that that situation was due inter alia to confrontations between ethnic groups. On the occasion of the consideration in 1996 of the third to ninth periodic reports of the Republic of Zaire, the predecessor State of the Democratic Republic of the Congo, it had expressed its concern about discrimination against the Pygmies and the ethnic cleansing policy that was apparently being implemented in Shaba.

49. In the light of the worsening of the situation in the country, the Committee had adopted in 1997 and 1998 three decisions in which it had inter alia expressed its deep concern at the serious violations of human rights including massacres and acts constituting genocide. In a communication addressed to the Security Council in 1998, the Secretary-General had recalled that a United Nations Investigative Team had been prevented by the Congolese Government from carrying out its mission in full. On the basis of the report of the Investigative Team, he had nevertheless concluded that serious violations of human rights and of international humanitarian law had been perpetrated on Congolese territory and that the murders committed by the

Alliance of Democratic Forces for the Liberation of the Congo (AFDL) and its allies, including elements of the Rwandan Patriotic Army (RPA), constituted crimes against humanity.

50. In spite of the serious facts reported by the Investigative Team - repeated massacres of civilians during the offensive which had brought the AFDL of President Kabila to power in 1993, massacres of unarmed civilians by ethnic militias in North and South Kivu in 1993, massacres of many unarmed civilians by the Interahamwe and Mai-Mai militias in October 1996, massacres of Rwandan Hutus fleeing to Wendji and Mbandaka and the refusal of the Congolese Government to authorize an investigation of all violations on its territory before and after its accession to power - no action had been taken by the Security Council other than the adoption of a statement in which its President had requested the Congolese Government to carry out an investigation itself, which the latter had refused to do, deeming the allegations concerning it to be a tissue of lies without any basis.

51. According to the report by the Special Rapporteur of the Commission on Human Rights on the human rights situation in the Democratic Republic of the Congo (A/53/365), the situation was very complex on the ground where various factions - Tutsis, Banyamulenges, Congolese Armed Forces (FAC), the Rwandan Army (RPA) from a neighbouring country, Mai-Mais and the former Rwandan Army (FAR) - confronted one another against the background of a civilian population that wanted only peace. The uprising of the former Rwandan and Banyamulenge allies of President Kabila had brought about many confrontations and deaths and the constitution by the rebels of the Congolese Movement for Democracy. The Government had reacted by inciting the population of the Congo to racial hatred against the Tutsis and to their physical elimination. At the end of August, the armed forces of Zimbabwe and Angola had entered the field on the side of the Congolese Government forces while those of Rwanda and Uganda had strengthened the rebel ranks, thus giving the conflict a regional dimension.

52. An ethnic cleansing policy had been put into effect and Tutsis had been victims of summary executions. Many serious violations of human rights and humanitarian law had occurred, such as the indiscriminate bombing by military forces of the civilian population, arbitrary arrests, rapes, torture, the recruitment of minors as soldiers and the systematic application of the death penalty by the Military Courts.

53. Those facts were confirmed by information from the non-governmental organizations (NGOs), Human Rights Watch and Amnesty International, the latter having reported many cases of incitement of the general public to eliminate rebels and Tutsis and the discovery of mass graves containing hundreds of corpses of massacred persons.

54. In conclusion, he said that the Government applied a policy of ethnic cleansing, particularly against the Tutsis, and regarded NGOs, journalists and human rights defenders as enemies to be harassed, intimidated and imprisoned. Violations of fundamental rights were still legion according to ethnic and political considerations, in violation of the most important provisions of article 5 of the Convention, and foreign countries continued to interfere in the conflict to an alarming extent by supplying the combatants with weapons and resources of various kinds.

55. As for recommendations, the Committee should reaffirm the recommendations contained in its decision no. 4 (53), particularly that calling on the parties to the conflict to stop the fighting and ethnic attacks and inviting the Congolese Government to cooperate with the OHCHR. In addition, it should repeat the recommendation whereby the Special Rapporteur had invited the Congolese Government to carry out an investigation into the facts reported and had requested the Congolese Government to cooperate in good faith with the international investigators. The Governments involved in the conflicts in the Democratic Republic of the Congo should also be urged to cease their interference forthwith. Lastly, the Secretary-General of the United Nations should draw the attention of the Security Council to the situation in that country with a view to settling the conflicts and ensuring that fundamental rights, including those protected by the Convention, were respected there.

56. The CHAIRMAN, speaking in his personal capacity, welcomed the analysis by the Country Rapporteur but regretted that he had not mentioned the efforts made by the Organization of African Unity (OAU) to settle the conflict. The Country Rapporteur had listed five items which deserved to form the subject of recommendations but it should, perhaps, also be mentioned that the Committee regretted that the discussion had taken place in the absence of a representative of the country and that it deplored the foreign intervention in the Congo. The Country Rapporteur had rightly mentioned the implication of Rwanda in the conflict but other neighbours of the Democratic Republic of the Congo were also involved. Indeed, it was extremely difficult to consider the situation in the Democratic Republic of the Congo without considering that of the neighbouring countries which were also interested parties.

57. The Committee should roundly condemn the flow of weapons into the country and emphasize the need to find a peaceful solution to the conflict. It would be useful to know, incidentally, whether the OHCHR had made any attempts in that area.

58. The Committee should be seized very rapidly of a text, whether in the form of a statement or a decision, whereby it would indicate that the International Convention on the Elimination of All Forms of Racial Discrimination was being seriously violated in the Democratic Republic of the Congo and that genocide was being perpetrated in that part of Africa.

59. Mr. FERRERO COSTA said that the information that had just been presented was very disturbing. The Committee really did not have enough time to consider serious cases of genocide and violations of fundamental rights. He hoped that the Committee's programme of work would be reconsidered so as to devote more time to situations of that kind without diminishing thereby the time allotted to the consideration of the reports submitted by States parties.

60. It would have been desirable for the Special Rapporteur on the situation of human rights in the former Zaire, Mr. Garretón, and the United Nations High Commissioner for Human Rights, or her deputy, to have attended the meeting since they could have conducted a dialogue with the experts of the Committee and have explained to them what measures could be envisaged in the current state of affairs.

61. The conflict was a dual one: on the one hand, and that was an extremely important factor which explained why it was repetitive, it was of an ethnic character and, on the other, it was regional or subregional. Consequently, it could not be resolved by the Congolese authorities alone. The solution to the problem depended to a major extent on the will of the neighbouring countries involved in it.

62. He fully supported the Country Rapporteur's five recommendations but would also like a reference included to the efforts made by the OAU to find a solution to the conflict. The Country Rapporteur had indicated that the President of the Security Council had recently made a statement on the situation in the Democratic Republic of the Congo and he wondered why the Council had not adopted a resolution on the subject. Was the case of Kosovo more serious than that of the Congo? Was genocide worse in Kosovo than in the Democratic Republic of the Congo? It was to say the least strange that everyone knew what was happening in Kosovo while the tragedy of the Great Lakes region was forgotten.

63. The Committee should thus make some very firm and very specific recommendations on the subject and explain clearly that the seriousness of the situation deserved a resolution by the Security Council and an intervention by the international community, through its peacekeeping organs. In order to draw the international community's attention to that forgotten tragedy, it might perhaps be advisable to take up the idea, which had already been suggested, of a press conference in the course of which the Committee would express its deep concern about the crisis in the Democratic Republic of the Congo.

64. He also hoped that the Committee would be more explicit about impunity and that the Country Rapporteur's third recommendation would place greater emphasis on the persons responsible for violations of human rights in the country.

65. The CHAIRMAN said it was necessary for the High Commissioner on Human Rights or her deputy to explain to the members of the Committee what was currently happening in the field and to set out the steps that the OHCHR intended to take in that regard, the more so as the Deputy High Commissioner, Mr. Ramcharan, had formerly been responsible for African affairs in the United Nations Department for Political Affairs.

66. Mr. de GOUTTES, having thanked the Country Rapporteur for his remarkable report and expressed his full support for the statements by the Chairman and Mr. Ferrero Costa, said he would like nevertheless to stress two of the alarming elements contained in that report, one of them being the resort to organized campaigns of incitement to racial hatred and - to use the words of the report - to "campaigns of incitement to hatred against the Tutsis, regarded as 'viruses', 'mosquitos' and 'rubbish' which must be eliminated". The Committee must very firmly condemn the resort to such hate campaigns and to the media use of hatred. Recalling that, in the past, the Committee had already condemned the methods used by Radio Mille-Collines, he noted that the situation still continued and said that the Committee should adopt a clear position on that point.

67. The other extremely alarming fact was the classification of human rights defenders, NGOs and journalists as enemies to be combated who were, as the Country Rapporteur had explained to the Committee, hunted down, arrested and imprisoned. Those two points should be mentioned in the statement or communiqué that the Committee would issue on the topic.

68. The CHAIRMAN said that the victims were not just Tutsis. It should not be forgotten that both parties, Tutsis and Hutus, had committed crimes.

69. Mr. SHAHI, having welcomed the analysis made by the Country Rapporteur of the situation in the Democratic Republic of the Congo, said he was ready to support a Committee resolution or decision on the topic but thought that, unless it obtained more precise information on the situation, the Committee risked repeating what it had said in its decisions of March and August 1998. It would be useful, for example, to know the position recently taken up by the Security Council and the contents of the statement made by its President.

70. He recalled that, in 1998, a Peace Conference had been held in Zambia and that, despite the message sent by the Secretary-General to the participants, the conflict still continued because the Congolese rebels, supported by Rwanda and Uganda, had not been invited. The situation was an extremely complex one, since Zimbabwe and Angola were supporting the Laurent-Desiré Kabila regime while Uganda and Rwanda supported the Congolese Tutsis. Meanwhile, the massacres continued.

71. He was in favour of Mr. Garretón, or someone else familiar with the situation, explaining to the Committee precisely what was happening in the country and what the situation was with regard to the OAU intervention force. As for Mr. Ferrero Costa's proposal that emphasis should be placed on the problem of impunity, he recalled that the Committee had recommended, in an earlier decision, that the terms of reference of the Arusha International Tribunal should be extended to cover crimes committed in the eastern part of the Democratic Republic of the Congo.

72. The CHAIRMAN said that Mr. Garretón was currently in Chile and his report was being translated but that the Committee should not postpone to its next session making a public statement on the topic or obtaining specific information on the situation prevailing in that country.

73. Mr. SHERIFIS said that the situation in the Democratic Republic of the Congo was very disturbing and he approved the idea of a public statement on the topic, as soon as possible. It was not enough to watch CNN or Euronews to be informed, since the members of the Committee would then be able to do their work perfectly well without leaving home. The United Nations had established a post of High Commissioner for Human Rights, and all the members of the Committee had welcomed that decision. It was regrettable, however, that a High Commissioner should exist and never be seen. The OHCHR should express an opinion on questions of serious, systematic and massive violations of human rights and should, indeed, be the first to do so. It was unacceptable to maintain that, if the the OHCHR took up a position on questions of violations of human rights, that might risk wounding certain States. The Committee should ask the staff members specializing in those matters to attend its meetings and to inform its members. The Committee could also obtain the

relevant pages of the report of the Investigative Team appointed by the Secretary-General to look into the allegations of massacres in the former Zaire, of which Mr. Chigovera, a former Committee expert, had been a member. The Committee must express an opinion on the topic by adopting a statement by the Chairman on behalf of the Committee, which would then be released to the press.

74. The CHAIRMAN suggested that the Committee secretariat should supply the members of the Committee with copies of the decisions taken in that area by the OAU.

75. Mr. NOBEL said that the direct or indirect participation of a number of countries neighbouring upon the Democratic Republic of the Congo could well transform an already tragic situation into a large-scale African war. Other States were also involved in the conflict, non-African States that were supporting the belligerents in one way or another. Nevertheless, there were NGOs working in the region that were trying to prevent the conflict from becoming worse. It was very important that the international community should support those efforts.

76. Moreover, as Mr. Ferrero Costa had rightly said, it was true that world public opinion was very familiar with what was happening in Kosovo but unaware of the events in the Great Lakes region. It would thus be desirable for the Committee to inform the journalists of its desire to see an improved flow of information concerning the region.

77. The CHAIRMAN said he took it that the Committee had decided to remain seized of the question and to ask the Country Rapporteur to submit to it, as soon as possible, a report based on his own overview and on the various opinions expressed by the experts on the topic. The Committee had also decided to request extra information on the situation either from the OHCHR or the OAU.

78. Mr. FERRERO COSTA suggested that there should be added to those three points the question of the means available to the Committee to follow up the situation.

79. Mr. SHAHI said that the Committee should also find out about Nelson Mandela's proposals to the 1998 OAU conference designed to find a solution to the civil war in the Congo together with the views of the Secretary-General.

80. The CHAIRMAN suggested that it should also obtain the proposals made by the Secretary-General of the United Nations, which had been criticized and rejected.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

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11 March 1999

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1313th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES

Rwanda

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Review of the implementation of the Convention in States parties whose reports are excessively overdue

Congo

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GE.99-40778 (E)

The meeting was called to order at 3.10 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3)

Rwanda

1. At the invitation of the Chairman, Mr. Kananura (Rwanda) took a place at the Committee table.

2. Mr. KANANURA (Rwanda) expressed regret that his Government had been unable to submit the eighth, ninth, tenth and eleventh periodic reports, the delay having been due mainly to the war that had broken out in Rwanda in 1990 and the massacres and genocide of 1994. In the aftermath of those tragic events, Rwanda had been working to establish the political institutions needed to restore peace and security in the country. His Government was grateful to the Committee for allowing it to submit the above-mentioned reports in a single document in the near future.

3. Providing first some background data on the country, he said that Rwanda's population of 7.7 million people was composed of three ethnic groups, the Bahutu, the Batutsi and the Batwa, who all spoke the national language, Kinyarwanda. The distinction between the three ethnic groups was not as clear-cut as between tribes in other African countries. The three groups intermarried, spoke the same language, shared the same culture and lived together on the same territory, not in separate areas.

4. having suffered the consequences of the policy of exclusion of the earlier regimes, Rwanda was doing everything in its power to ensure that the members of the three ethnic groups were henceforth equal, both before the law and in actual practice.

5. He briefly reviewed the structure of Rwanda's political and judicial system. The 1991 Constitution, the 1993 Arusha Peace Agreement, the 1994 Declaration of the Rwandese Patriotic Front (FPR) and the 1994 Protocol of Agreement, all formed an integral part of Rwandan fundamental law. Human rights were guaranteed by the fundamental law, the international conventions to which Rwanda was a party and special legislation. Their protection was ensured by the courts. Pursuant to legislation passed by the Parliament on 19 January 1999, a National Human Rights Commission had been set up to examine all violations of human rights committed on Rwandan territory, in particular by state bodies, individuals acting on behalf of the State and national organizations operating in Rwanda.

6. His Government had launched a number of human rights information programmes. Human rights issues were being included in the educational curriculum. The population was also informed of its rights through broadcasts. One of the tasks of the National Human Rights Commission would be to heighten human rights awareness in the Rwandan population.

7. Concerning implementation of articles 2 to 7 of the Convention, he said that Rwanda was deeply committed to respecting fundamental human rights and firmly supported all peoples that combated racial discrimination in any form.

His Government vigorously condemned any activity involving racism or racial discrimination as being prejudicial to the exercise of human rights and fundamental freedoms and to international peace and security.

8. Rwanda recognized the values and principles enshrined in the international conventions and human rights instruments which Rwanda had ratified, including the Universal Declaration of Human Rights, the International Human Rights Covenants, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention on the Elimination of All Forms of Racial Discrimination and the African Charter on Human and Peoples' Rights.

9. At the national level, the principle of non-discrimination was anchored notably in the Constitution of 10 June 1991 and the Arusha Peace Agreement and its Protocols. Whereas in the past, official documents had been required to state ethnic origin, article 16 of the Protocol to the Agreement did away with any such reference.

10. A number of other laws and regulations also laid down the principle of non-discrimination. Article 393 of the Penal Code made slander, insults or acts of hatred directed against a group of persons who were members of a particular race or religion as well as acts likely to instigate such hatred punishable by a prison sentence of from one month to one year and/or a fine not exceeding 5,000 francs. Article 25 of the Labour Code prohibited all discrimination in employment. The Government had also taken measures to eliminate racial discrimination in the areas of education, culture and information.

11. Concerning more particularly the implementation of article 2, he said that in order to give effect to article 2.1. (a), the Constitution recognized the equality of all citizens before the law without any distinction, expressly prohibited racial discrimination and guaranteed that foreigners enjoyed the same civil rights as Rwandan citizens.

12. Article 28 of decree-law 06/82 of 7 January 1982 on the status of judicial personnel stipulated that judges were required to serve the cause of justice without any discrimination on the basis, inter alia, of race, colour, origin, ethnic group or clan. The supreme judicial authority for administrative matters, the Council of State, could annul any discriminatory administrative act, measure or decision.

13. The aforementioned measures, by their very nature, gave effect to the commitment under article 2 not to sponsor, defend or support racial discrimination by any persons or organizations. Such acts were punishable under the Penal Code and the Labour Code.

14. The following measures had been taken to implement article 2.1. (c) of the Convention: amendment and revision of the 1978 Constitution by the adoption of the 1991 Constitution guaranteeing fundamental rights and freedoms; reaffirmation in the Arusha Peace Agreement of the firm determination to respect the principles of the rule of law, democracy, national unity, pluralism and fundamental human rights and freedoms;

establishment of the National Human Rights Commission; setting up of the National Unity and Reconciliation Commission under legislation passed on 19 January 1999.

15. Regarding implementation of article 3 of the Convention, he said that Rwanda had consistently condemned racial segregation, and apartheid in particular. Equality before the law was guaranteed for all without any distinction. But the massacres and genocide of 1994 had taken place despite those measures, and in order to prevent the crime of genocide once and for all, Implementing Act No. 8/96 of 30 August 1996 on the organization of the prosecution of offences constituting the crime of genocide or crimes against humanity, which had entered into force on 1 October 1990, specifically provided for punishment of those crimes.

16. With regard to the implementation of article 4 of the Convention, the aforementioned article 393 of the Penal Code prescribed punishment for all acts of discrimination, as did Implementing Act No. 8/96 for the crime of genocide.

17. Article 16 of the Constitution enshrining equality of all citizens before the law without any discrimination was the basic text of relevance to the implementation of article 5 of the Convention. Equal treatment in the courts was set forth in article 92 of the Constitution.

18. Articles 310-395 of the Penal Code guaranteed the right to security of person and protection against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; article 297 made arbitrary detention a punishable offence.

19. The Rwandan Constitution and legislation guaranteed the civil and political rights set out in article 5. They included the right to freedom of movement, although immigration, emigration and change of residence were subject to certain restrictions on grounds of public order or State security, the right to nationality, the right to marriage and choice of spouse, the right to own property, the right to inherit, freedom of thought, conscience and religion, freedom of opinion and expression and freedom of peaceful assembly and association. Economic, social and cultural rights were guaranteed not only under the Constitution but also by virtue of Rwanda's ratification of the International Covenant on Economic, Social and Cultural Rights and by legislation, including the Labour Code.

20. Under its housing policy, the Government had notably granted subsidies to the Twa minority to improve the ramshackle dwellings in which they were housed. A fund to assist the neediest survivors of the genocide, focusing on education, health and housing, had been established by an Act of 22 January 1998.

21. Health policy had focused on the provision of low-cost medical care in State hospitals, the decentralization of health care and health education. There were plans to extend social security coverage to include health insurance for the entire population.

22. Equality of access to public places and services was guaranteed by articles 16 and 21 of the Constitution.

23. With regard to article 6 of the Convention, the right of every individual to seek redress before the courts and other competent bodies was guaranteed by article 14 of the Constitution.

24. Turning to article 7, he said that Implementing Act No. 1/1985 provided for both public and private educational establishments and human rights were currently being incorporated in their curricula. The Constitution guaranteed freedom of association and freedom to participate in cultural activities. Government human rights information programmes included radio broadcasts dealing with the judicial system in general and human rights in particular.

25. The recently established Human Rights Commission and National Unity and Reconciliation Commission were to serve as the basic framework for the safeguarding of human rights and human rights teaching. In keeping with its commitments under the Convention, the Broad-Based Transitional Government had assigned top priority to reconciliation among the three Rwandan ethnic groups and the replacement of the culture of impunity by a culture of human rights.

26. Mr. van BOVEN (Country Rapporteur) said that the passive stance of the international community during the genocide in Rwanda in 1994 had been a serious defeat for the United Nations as a whole and for the Committee on the Elimination of Racial Discrimination in particular. At a time when considerable progress was being made in the prevention of human rights violations, nobody had suspected that a catastrophe of such magnitude was in the offing. It was a tragedy that so little had been done to prevent it.

27. In updating the Committee's information on the situation in Rwanda, he had drawn, in particular, on the report of the High Commissioner for Human Rights on the Human Rights Field Operation in Rwanda (A/53/367) and the report of the Special Representative of the Commission on Human Rights on the situation of human rights in Rwanda (A/53/402), whose mandate consisted in making recommendations on improving the human rights situation in Rwanda, facilitating the creation and effective functioning of an independent national human rights commission and making recommendations on situations in which technical assistance in human rights to the Government of Rwanda might be appropriate. Both the High Commissioner and the Special Representative would be reporting to the forthcoming session of the Commission on Human Rights. Resolution 156 adopted by the General Assembly at its fifty-third session reiterated many of the points made by the Committee in decision 5 (53) adopted at its previous session.

28. Serious concerns about the security conditions in Rwanda, which were closely bound up with the situation in the Great Lakes region as a whole, had been expressed in paragraphs 4 and 5 of Committee decision 5 (53) and in paragraph 3 of General Assembly resolution 156. While there were still considerable grounds for concern, some improvements had been discernible in recent months in the north-west of the country and elsewhere. He welcomed the preventive and punitive measures taken by the Government against crimes committed by the armed forces. According to the report issued in November 1998 by the International Commission of Inquiry on the sale, supply

and shipment of arms and related matériel in the Great Lakes region (S/1998/1096), the free flow of arms into and within Africa was a major long-term cause of insecurity and instability in the central African subregion. It was fuelled by the presence of a multitude of rebel groups who enjoyed a large measure of governmental support. The destructive process it entailed had been hastened by the close links that had been established among the armed groups, the armies of losers proliferating throughout central Africa of which the former Rwandan government forces were the most violent, well-armed, well-organized and most dangerous.

29. With regard to the judicial process, prison conditions and genocide survivors, General Assembly resolution 156 commended the prosecution of elements of Rwandan armed forces that had violated international humanitarian law, the efforts of the Government to ensure the independence of the judiciary and to strengthen the capacity of the judicial system, the continuation of trials of those suspected of genocide and crimes against humanity, and the strengthening of the protection of genocide survivors. It noted that prison conditions were still deplorable and encouraged the Government to continue looking for pragmatic solutions aimed at increasing the number of prisoners released. He appreciated the difficulties involved in keeping some 125,000 persons in detention and stressed the need for assistance in monitoring their conditions and protecting them against cruel, inhuman and degrading treatment or punishment.

30. While progress had been made in the administration of justice, with an increase in the number of judges, prosecutors and defence lawyers, there were still immense requirements to be met in an expeditious, fair and effective manner. There was also a major need for legal aid and reparations, including compensation for victims of genocide. He welcomed the establishment of a fund for that purpose and the Government's efforts to ensure that abandoned property occupied by others was promptly returned to its rightful owners. In that connection, he drew attention to the Committee's General Recommendation XXII.

31. After a difficult start, the International Criminal Tribunal for Rwanda had taken measures to expedite criminal proceedings. Judgements had been handed down against former Prime Minister Jean Kambanda and former district mayor Jean-Paul Akayesu. It was the first time that an international court had based its judgement on the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

32. The closure of the United Nations Human Rights Field Operation in Rwanda indicated a certain reluctance on the part of the Government to accept international monitoring. It was regrettable that the negotiations between the authorities and the High Commissioner for Human Rights to keep the Operation open had failed. In her report to the General Assembly, the High Commissioner had expressed regret and her belief that Rwanda would still benefit from sustained international cooperation and support to strengthen its domestic capacity for the promotion and protection of human rights.

33. He would welcome information regarding further developments in the establishment of the National Human Rights Commission and the implementation of the Government's five-point plan, which comprised training of national

human rights monitors, initiating human rights education programmes in formal and informal education, providing the National Human Rights Commission with the necessary financial and technical assistance, initiating a human rights public awareness campaign using media resources, and establishing a national centre for human rights as an information clearing house and training centre. It was important that the ethnic groups were equitably represented in the composition and activities of the National Commission and in all the country's major political and social institutions (paragraph 9 of Committee decision 5 (53)). The Committee would also appreciate further details concerning the National Unity and Reconciliation Commission.

34. He supported the plan to organize a workshop or round table bringing together regional and international experts and representatives of the National Assembly, the Government, the judiciary and civil society with a view to launching a public debate on how the National Human Rights Commission could be made an independent and effective institution on the basis of recognized international human rights standards. The Committee would be pleased to offer its expertise in that context as a monitor of the standards contained in the Convention.

35. Despite improvements in the situation in Rwanda, many paragraphs of Committee decision 5 (53) continued to be relevant, particularly those concerning security in the region as a whole, the arms flow and the many armed groups which continued to violate basic principles of humanitarian law and were accountable to no authority. The Committee condemned in the harshest terms those who traded in arms for profit. He had no hesitation in describing such corporations as accomplices in war crimes and crimes against humanity.

36. The Government's plans and projects did not constitute solutions in themselves but would serve as important tools for the establishment of better conditions for the enjoyment of human rights. The Committee was prepared to offer the Rwandan authorities every assistance in those efforts.

37. Mr. Yutzis took the Chair.

38. Mr. de GOUTTES suggested that the oral report given by the representative of Rwanda might usefully be written up for distribution to the members of the Committee, and indeed might well form a basis for a core document for use by all the treaty monitoring bodies.

39. Referring to the Committee's decision 5 (53), he requested information about progress in correcting the under-representation of ethnic Hutus in important political and social institutions in Rwanda (para. 9), the expected composition of the new National Human Rights Commission (para. 13) and the current state of relations between the national judicial authorities and the International Criminal Tribunal for Rwanda (para. 6). Referring to decision 4 (52), he asked whether the process of rebuilding civil institutions, in particular an independent judiciary, had gathered pace and whether there had been any improvement in the deplorable conditions of detention of persons accused of serious human rights violations (para. 4).

40. Mr. KANANURA (Rwanda), in reply to the question about Hutu under-representation, said that all the parties that had taken part in

the talks leading to the Arusha Peace Agreement were represented in the Government, with the exception of the National Republican Movement for Development and Democracy (MRND), because of its part in the genocide. A number of ministerial posts had also been given to the Rwandese Patriotic Front (RPF). Consequently, there were more Hutus than Tutsis in the Government. Moreover, since each of the political parties had 11 representatives in the National Assembly, and because of the ethnic composition of many ministries, there were around five times as many Hutus as Tutsis in the main political institutions of the country.

41. With regard to the National Human Rights Commission, he said that, after consultations with the church, non-governmental organizations (NGOs) and political parties, the Government had drawn up a list of 10 names, which had been submitted to the National Assembly. No decision had yet been taken on the seven people who were to make up the Commission.

42. A protocol of cooperation between the International Criminal Tribunal for Rwanda and the Government had been proposed by Rwanda in 1998, but the Tribunal had not responded. Neither the people nor the Government of Rwanda believed it was right that the planners of the genocide were being tried outside Rwanda when institutions were in place to try them within the country. There were also very serious problems involved in transporting witnesses - many of whom were illiterate peasants - to Arusha to give evidence. It was particularly difficult to guarantee their anonymity and a number of them had been killed after returning to Rwanda. Another problem was that the population was unable to see that justice was being done: people did not believe, for example, that the former Prime Minster had been put on trial. The Government had therefore asked the Tribunal to conduct at least part of the proceedings in Rwanda itself, in order to show genocide survivors that justice was being done.

43. With regard to the question of rebuilding an independent judiciary and the conditions under which detainees were being held, he observed that the genocide had claimed some 1.2 million victims within a period of three months, and that the perpetrators of the genocide were thought to number around 500,000. There were currently 136,000 detainees, but no case files, as they had been detained during the RPF advance on Kigali to stop the genocide and the military had been unable to keep records. Assistance had been sought and gratefully received for the training of judges and police, and the organization "Advocats sans frontières" had helped with the defence of detainees, but the number of prisoners was so large that some way had to be found to make the situation more manageable. The Government had therefore grouped the prisoners in categories according to the kind of offence. Those accused of crimes of genocide, including crimes committed by persons in authority - members of the Government, the military and local administrators - but also those who had killed in order to avoid being killed, fell into two categories. One category included those who had committed offences against property - they numbered around 20,000. The Government wished to release them, but that had not yet been possible, since local people were not always willing to receive them back into the community, and summary revenge had been taken on some who had been released. Between 400 and 500 detainees in the other categories had been tried, as compared with the two who had been tried by the Arusha Tribunal.

44. With regard to detainees' conditions, he said that, as it usually took three weeks to make the preparations to bring one person to court, the Government had attempted to reduce the numbers awaiting trial by offering to commute the sentence of anyone who confessed. Unfortunately, that had had the reverse effect, since each confession implicated between 5 and 10 other people still at large, who had to be arrested. In 1995, Rwanda had had only 14 prisons, and, despite the construction of new detention centres since then, there were now simply too many detainees, all of whom required food and health care. In order to make it possible for detainees to spend some time in the open air and at the same time help to meet their own food requirements, they had been given the opportunity to plant and harvest crops in fields nearby. His Government was well aware of the amount that remained to be done, but it could not simply release those involved in the killings, because that could provoke another genocide.

45. Mr. van BOVEN asked whether he was right in assuming that, since the composition of the National Human Rights Commission had not yet been determined, it was not yet in operation. He also asked whether the Rwandan National Unity and Reconciliation Commission had started work and whether Rwanda was implementing the Government's five-point plan to train human rights monitors, initiate human rights education programmes, provide the National Human Rights Commission with financial and technical assistance, initiate a public awareness campaign and establish a national centre for human rights.

46. Mr. KANANURA (Rwanda) said that the legislation on the National Human Rights Commission had been enacted but it was difficult to find seven persons who would reflect all the shades of opinion in the country. The National Unity and Reconciliation Commission was now functioning, the President - a former Minister for Social Affairs and Gender - having been appointed in January 1999.

47. With regard to the five-point plan, the Government hoped for help and cooperation from the Office of the United Nations High Commissioner for Human Rights (UNHCR) with regard, inter alia, to training, technical assistance and human rights education. In their three years in Rwanda activities of the human rights officers in the field had been confined to monitoring. The Government was dissatisfied with the situation, since what was needed was education and the establishment of a human rights-based culture. After 30 years of government based on impunity, it would take years to establish such a culture, and Rwanda looked to the international community to do its best to get the Human Rights Commission off to a good start.

48. Lastly, he pointed out that the best hope for protecting human rights was security. That was still non-existent in Rwanda, as evidenced by the continuing activities of the Interahamwe movement operating in the region.

49. Mr. van BOVEN, thanking the representative of Rwanda for his answers, said he looked forward to receiving the next regular report and hoped for continued dialogue with Rwanda. When considering reports, the Committee was particularly interested in factual details, not only the legal framework, which could sometimes mask the real situation. The situation remained dangerous, indeed potentially explosive, and there were still many aspects of grave concern in Rwanda and in the region as a whole, since the situations in

neighbouring countries were interlinked. The Committee would maintain Rwanda under its prevention, early warning and urgent action procedures. It was aware of the difficulties faced by the authorities and was ready to help in any way necessary.

50. The CHAIRMAN wished Rwanda well on the road to peace.

51. The representative of Rwanda withdrew.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Review of the implementation of the Convention in States parties whose reports are excessively overdue

Congo

52. Mrs. SADIQ ALI (Country Rapporteur) reporting on the situation regarding implementation of the Convention in the Congo, said that when the Committee had considered the situation in the Congo in March 1998, the Congo had still been suffering the aftermath of the armed conflict which had initially broken out in June 1997. The Sub-Commission on Prevention of Discrimination and Protection of Minorities had adopted resolution 1997/1 (E/CN.4/Sub.2/1997/50) and had recommended that the Commission on Human Rights consider the situation at its next session. Despite several cease-fires and draft accords put forward by an International Committee of Mediation presided over by the President of Gabon, Mr. Omar Bongo, negotiations had failed.

53. The Congolese population comprised nine major ethnic groups subdivided into about 75 tribes, with large Gabonese and French communities, but the fighting had fundamentally been an ethnic conflict between northerners loyal to the current President Sassou Nguesso and southerners loyal to former President Lissouba, who had been forced into exile in October 1997. During the fighting, militias on both sides had detained many persons because of their ethnicity and held them in deplorable conditions. In Brazzaville they were reported to have set up barricades, stopping civilians to check identity cards and the language they spoke; many members of the ethnic group of the opposing side had been immediately killed. Government forces were also said to have detained, beaten and killed individuals because of their ethnicity.

54. Various sources attested to the further undermining of the precarious peace and heightened insecurity since the war had ended. Amnesty International had received reports of government forces, including President Sassou Nguesso's own militia ("Cobras"), deliberately killing unarmed civilians suspected of supporting the armed opposition groups ("Ninjas") loyal to former Prime Minister Kolelas. Thousands of people were reported to have been forced to flee their homes into the forests, and up to 15,000 were reported to have fled to the neighbouring Democratic Republic of the Congo. The United Nations Security Council had called several times on all parties to ensure the safety of the civilian population and the unrestricted delivery of humanitarian assistance.

55. In July 1997, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary and arbitrary executions had drawn attention to the explosive situation in the country; he had received allegations of indiscriminate bombing of popular neighbourhoods in Brazzaville and summary executions of civilians and combatants (E/CN.4/1998/68/Add.1). The authorities should investigate allegations of the right to life, bring offenders to trial and offer compensation to victims' families. Both parties, he had reported, were responsible for torture and deliberate and arbitrary killings and most victims were targeted because of their ethnic identity.

56. In November 1998, the Congolese Observatory of Human Rights of the Federation of Human Rights (FIDH) had reported more than 100 summary executions since the new authorities had taken power, unlawful arrests and detentions, systematic violations of human rights and acts of racial discrimination against well-targeted victims, and the ineffectiveness of the judicial system, driving the Congo towards chaos and barbarity. The police still functioning were those which supported the Government's actions; and freedom of expression had been suppressed. Societal discrimination and violence, including sexual abuse, against women and children, even by prison guards, was frequent.

57. The Special Rapporteur of the Commission on Human Rights on mercenaries had pointed out (E/CN.4/1998/31) that the active intervention of mercenaries had become one of the ingredients of the conflict. Mercenaries had, paradoxically, been recruited and trained previously, under President Lissouba's legal Government. Congo had not yet ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries which it had signed in 1989, and the Committee should urge the Congo to take the necessary steps without delay.

58. During a visit to the Republic of Congo in July-August 1998, Amnesty International's delegates had established that there had been no independent and impartial investigations into the human rights abuses committed in previous months and years and no one had been brought to justice for the abuses.

59. According to the 1997 United States Department of State report, Pygmies faced severe discrimination in employment, health and education. Citizens sometimes resorted to "vigilante justice", killing those presumed to be thieves and "sorcerers". Many Pygmies had a Bantu "patron" to whom they were obliged in perpetuity.

60. She concluded that in the light of the disturbing situation in the Congo, action by the Committee was needed.

61. Mr. BANTON reminded the Committee of the procedure adopted when dealing with the case of Haiti. Bearing in mind the information given by the Country Rapporteur, the Committee should express concern regarding the status of implementation of the Convention in the State party, request updated information and urge the State party to resume its dialogue with the Committee and to make use of the technical assistance of the United Nations in implementing its international obligations.

62. Mrs. SADIQ ALI emphasized that the Congo ought to be urged to take the necessary steps to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. She highlighted the fact that, according to the Amnesty International report, no independent investigation had been carried out into human rights abuses and no one had been brought to justice, and that, despite moves by the Special Rapporteurs, of the Commission on Human Rights, the Committee and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, no action had yet been taken.

63. Following a suggestion by Mr. FERRERO COSTA, the CHAIRMAN asked Mrs. Sadiq Ali to prepare a draft decision with the assistance of Mr. Banton.

The meeting rose at 5.35 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1314th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (continued)

The situation in the Federal Republic of Yugoslavia

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GE.99-40787 (E)

The meeting was called to order at 10.05 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

The situation in the Federal Republic of Yugoslavia (CERD/C/364; the Committee's decision 3 (53))

1. At the invitation of the Chairman, Mrs. Boskovic-Prodanovic (Yugoslavia), Mr. Djordjevic, Mrs. Nikolic, Mr. Ristic and Mrs. Scepanovic took places at the Committee table.

2. The CHAIRMAN welcomed the Yugoslav delegation and invited it to provide the additional information concerning Kosovo and Metohija requested by the Committee in decision 3 (53) which it adopted on 17 August 1998 (A/53/18, para. 22).

3. Mr. HODZA thanked the Committee for inviting his delegation to the present session of the Committee and emphasized the importance that his Government attached to the quest for a peaceful political solution to the problem of Kosovo and Metohija based on respect for the sovereignty and territorial integrity of all the communities living in that territory. He also reaffirmed his Government's desire to honour its commitments, particularly in the field of human rights, and to cooperate with the Committee.

4. The Federal Republic of Yugoslavia was a multi-ethnic, multilingual and multiconfessional country. Twenty-six national minorities and ethnic groups were living together in its territory. In spite of the obstacles with which it was faced (civil war in neighbouring countries, presence of refugees, international sanctions), Yugoslavia was endeavouring to apply the principles set forth in the various international instruments to which it was a party.

5. The Yugoslav Constitution guaranteed protection of the civil, political, economic, social and cultural rights of all citizens, including ethnic minorities, without any discrimination. Moreover, in December 1998, Yugoslavia had ratified the Council of Europe's Framework Convention for the Protection of National Minorities, thereby manifesting its commitment to respect the highest international standards in that field.

6. The Government's desire to guarantee the same rights to all was manifested at various levels. In the field of freedom of movement, for example, 22 per cent of the travel documents had been issued to citizens of Kosovo and Metohija and, in the field of education, instruction was provided in the mother tongue of the populations concerned. With regard to freedom of the press, public information, whether in the form of publications or television programmes, was disseminated in the language of the national minorities (Serbian, Albanian, Romany and Turkish) and, in the field of health, all citizens of Kosovo and Metohija enjoyed health care and had access to the services provided in public institutions or by private practitioners, some of whom were Albanian. Finally, with regard to religious confession, the State also guaranteed respect for the beliefs of every individual.

7. However, the Government's efforts were being impeded by the Albanian separatists who were imposing their will on the population. That was the case, for example, in the education sector where members of the Albanian minority were abandoning the official school curriculum out of fear of reprisals. The Albanian separatists were also taking advantage of the freedom of the press in order to incite inter-ethnic hatred and attempt to overthrow the constitutional order.

8. It should be noted, therefore, that some members of the Albanian community were seeking neither cooperation nor dialogue. They had joined the rebellion and were committing terrorist acts with a view to the establishment of a "Greater Albania". To that end, they were violating the provisions of the Convention, murdering, abducting, expelling and ill-treating persons and destroying their property. Although they did not constitute the majority of the Albanian community in Kosovo and Metohija, they were bringing pressure to bear on that community. It was for that reason, and not because the Government was persecuting them, that some members of that community were deprived of their rights and freedoms. The police operations were merely a response to the terrorist acts and were intended to protect citizens.

9. There had been a notable upsurge in the activities of the Albanian separatists with a view to obtaining the secession of Kosovo and Metohija from Yugoslavia. They were targeting civilians of all ethnic origins in addition to policemen, clergymen, journalists, members of humanitarian missions and diplomats.

10. He drew special attention to the fate of children in that context. He denounced, in particular, their manipulation in demonstrations and their use in the arms traffic, as well as their deprivation of the right to education. In that regard, he called upon the competent United Nations bodies to intervene.

11. He further indicated that the terrorist groups were benefiting from logistic support from the Republic of Albania. Information on that subject was regularly transmitted to the Special Rapporteur on the question of the use of mercenaries and the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia. Those groups were also receiving spontaneous or compulsory contributions from Albanians working abroad or living there on social welfare as false asylum seekers. They were deriving other financial resources from the drug traffic, prostitution, arms smuggling and other criminal activities.

12. Given the fact that the Albanian authorities were not preventing those activities but, in fact, were openly encouraging separatism and terrorism in Kosovo and Metohija, it was of the utmost importance that, in accordance with the relevant resolutions of the Security Council, the international community should condemn the terrorist attacks, provocations, murders and abductions, halt the influx of funds from abroad and take appropriate measures to put an end to the activities of the terrorists who, in reality, far from desiring a peaceful settlement of the conflict were seeking the secession of Kosovo and Metohija at any price.

13. He said that the Republic of Serbia and the Federal Republic of Yugoslavia had made proposals and taken measures, to no avail, in an attempt to solve that internal problem by entering into a constructive dialogue with the political representatives of the national Albanian community. The latter had not responded to the numerous invitations to talks that had been issued by the Serbian President and Government. Moreover, the signature of the 11-point agreement between the President of the Federal Republic of Yugoslavia and the United States Special Envoy, Mr. Richard Holbrooke, which contained principles that could lead to a lasting solution to the conflict, had not prevented them from continuing their terrorist activities.

14. In October 1998, an agreement had been signed between the Government of the Federal Republic of Yugoslavia and the Organization for Security and Cooperation in Europe (OSCE) concerning the OSCE verification mission in Kosovo and Metohija. Cooperation between the States bodies and the OSCE mission had been fruitful and constructive and the Government had guaranteed and ensured security and freedom of movement.

15. The political settlement of the problem of Kosovo and Metohija had been discussed at Pristina and at Belgrade with representatives of various national communities, but the representatives of the Albanian political parties, being advocates of separatism and terrorism, had refused to take part therein. Those discussions had led to the formulation of the Joint Draft Agreement on the Political Framework of Self-Rule in Kosovo and Metohija (CERD/C/364, para. 54) in November 1998.

16. That joint agreement developed and further clarified the Milosevic-Holbrooke Agreement, guaranteed the equality of all the ethnic and national communities and of all the citizens of Kosovo and Metohija and granted them democratic autonomy in which each recognized national community was represented under equitable conditions.

17. A declaration on the Joint Draft Agreement was adopted in November 1998 by the representatives of the national communities and the political parties. The signatories of the declaration felt that the draft agreement constituted an equitable and democratic political solution to the problems being faced in Kosovo and Metohija. They invited all the other political parties in Kosovo and Metohija to endorse the draft and to make known their views and suggestions in order to help to elaborate and implement it.

18. While the Federal Republic of Yugoslavia and the Republic of Serbia were making efforts to institute a meaningful dialogue, the leaders of some Albanian political parties in Kosovo and Metohija were refusing or delaying the dialogue under various pretexts. However, the sanctions imposed on the Federal Republic of Yugoslavia, which were weakening the population and the country as a whole, had been tightened.

19. In accordance with its commitments, the Republic of Serbia had endorsed the principles for a peaceful settlement of the conflict in Kosovo and Metohija which had been adopted by the Contact Group and had taken part in the recent negotiations at Rambouillet, which had been suspended without result. In that regard, his delegation denounced the attitude of the United States and of some members of the Contact Group who were creating confusion concerning

the outcome of those negotiations. It wished to reaffirm that there could be no question of granting independence to Kosovo and Metohija. It was ready to resume talks on the subject of self-rule for that region provided that all the parties involved in the negotiations respected the sovereignty and territorial integrity of the Republic of Serbia and the Federal Republic of Yugoslavia. However, Yugoslavia could under no circumstances accept the presence of foreign armed forces in its territory.

20. In short, he reaffirmed that his Government was prepared to enter into a dialogue concerning the autonomy, but not the secession, of Kosovo and Metohija. He regretted that some influential international factors were helping to support the separatists and expressed doubts concerning the real desire of some of the parties for dialogue.

21. Finally, he called upon the Committee to support the efforts of the Republic of Serbia and the Federal Republic of Yugoslavia to reach a peaceful political agreement based on respect for sovereignty and territorial integrity and granting equal rights to all citizens and to all national communities in Kosovo and Metohija.

22. The CHAIRMAN thanked the delegation of the Federal Republic of Yugoslavia for the information that it had communicated to the Committee, particularly on the agreements that had or had not been concluded concerning the situation in Kosovo and Metohija, and for the additional documents that it had made available to the members of the Committee. He invited Mr. Nobel, the Rapporteur for the country, to present his report on the situation in Kosovo and Metohija.

23. Mr. Yutzis took the Chair.

24. Mr. NOBEL (Rapporteur for Yugoslavia) said that, in its decision 3 (53) on the Federal Republic of Yugoslavia which was adopted in August 1998 during its fifty-third session, the Committee, considering the grave developments in Kosovo and Metohija since the adoption of its concluding observations on 30 March 1998 concerning the report of that country, had requested the Government of the Federal Republic of Yugoslavia to provide it with information about the attempts that had been made to achieve a meaningful dialogue with the Albanian leaders in Kosovo and Metohija which would ensure respect for the internationally recognized human rights. The Committee had called upon the Government and the leadership of the Albanian community in Kosovo and Metohija to stop immediately all military and paramilitary activities or hostilities and to enter into negotiations on a just and lasting solution under which Kosovo and Metohija would be granted the highest level of autonomy in order to eliminate all forms of racial discrimination. The Committee had also referred to its concluding observations of 30 March 1998 concerning the report submitted by Yugoslavia, and to its general recommendation XXI (48) of 8 March 1996, and had taken note of Security Council resolution 1160 (1998).

25. He said that the Committee welcomed the desire of the Government of the Federal Republic of Yugoslavia to maintain dialogue with the Committee in spite of the dramatic situation with which it was faced, since dialogue was particularly important in view of the differences of opinion that probably existed between the Committee and the Government.

26. He then presented a detailed analysis of the report of Yugoslavia. Chapter II, which provided general information on the constitutional and legislative provisions, did not mention any court cases relating to the implementation of the Convention. It stated that Yugoslavia had ratified the Council of Europe's Framework Convention for the Protection of National Minorities, an instrument that was hardly phrased in binding terms and which, in the opinion of some specialists, actually weakened the European Convention on Human Rights.

27. In Chapter III, paragraph 9 more or less summarized the position of Yugoslavia on the situation in Kosovo and Metohija and contained a wealth of figures and statistics concerning freedom of movement, health care and education which were beyond the scope of the Convention. With regard to travel documents, he had been surprised to read in the report (para. 10) that "members of the Albanian national minority are in no way discriminated regarding the exercise of their right to a passport or a visa", bearing in mind the fact that the Albanian delegates to the negotiations held at Rambouillet (France) in February 1999 had been able to obtain their travel documents only at the last moment.

28. Chapter IV contained a blatant indictment of the Albanian separatist opponents, who were accused of separatism, fascism and engagement in the drug traffic and ethnic cleansing. They were allegedly terrorizing their own population, including elderly persons and children, in order to force them to endorse their plans and, to that end, were committing numerous grave violations of human rights. The Republic of Albania was likewise allegedly providing considerable logistic support for Albanian separatism in Kosovo in violation of the national frontiers of Yugoslavia in an attempt to establish a "Greater Albania" and members of Islamic and other international terrorist organizations had allegedly joined the ranks of the rebels (paras. 37-39). Finally, it was alleged that the Kosovo Liberation Army was financed through contributions exacted from the Albanian community abroad and through the drug traffic and prostitution.

29. He was aware that the Albanians in Kosovo and Metohija were committing grave violations of human rights. However, he was struck by the veritable indictment drawn up against the Albanians and the absence of any information concerning the violations committed by the police and the military forces of the Federal Republic of Yugoslavia, which resulted in a one-sided report.

30. On examining chapter V, the only one containing information that responded to the Committee's request in its decision 3 (53), he would like to know why it was the President of the Republic of Serbia and not the Government of the Federal Republic of Yugoslavia who had proposed a meaningful dialogue to the political representatives of the Albanian community in Kosovo and

Metohija (paras. 43-61). Why was the term "Kosovo-Albanian leadership", which was employed in the Committee's decision, not used to designate the Albanian party?

31. He said that, although the expression "national community" was often used in the report (paras. 43, 44, 49 and 54), none of the various agreements that had been concluded on the situation in Kosovo and Metohija, including the Holbrooke-Milosevic Agreement and the Agreement between the Federal Republic of Yugoslavia and the Organization for Security and Cooperation in Europe (OSCE), had been signed by leaders of the Albanians in Kosovo and Metohija. However, a declaration on the Joint Draft Agreement on the Political Framework of Self-Rule in Kosovo and Metohija had been signed on 25 November 1998 by the Republic of Serbia and representatives of the Gorançi, Egyptian, Muslim, Romany, Turkish and other communities in Kosovo and Metohija (para. 58). It would be useful to know who those communities were and whether they expressed the political aspirations of the people and leaders of Kosovo and Metohija.

32. Quoting information provided by the Minority Rights Group International, he drew attention to the manner in which the Albanian leaders had moved from a moderate and essentially non-violent claim expressed by the Democratic League of Kosovo to a harder attitude manifested by the establishment of the Kosovo Liberation Army (KLA), which had been constantly increasing its manpower and its means since its creation in 1996. They had also established the Parliamentary Party of Kosovo, whose hardline president, Adem Demaçi, had withdrawn from the Rambouillet negotiations, thereby giving hope for a lasting solution to the problem of Kosovo and Metohija.

33. The report of Yugoslavia was not encouraging since it did not admit the slightest fault on the part of the Yugoslav State, nor did it in any way take into consideration the deep-seated causes of the conflict, such as the economic and social underdevelopment of Kosovo and Metohija, the disregard shown for the economic, social and cultural rights of the Kosovo Albanians, the atrocities committed in the past, the historical mistrust between the parties, the limitation of the region's autonomy in 1989 and the warrior mythology that was being maintained by the Serbian leaders.

34. He continued his analysis of the overall human rights situation in Kosovo and Metohija in the light of other sources. According to the Department of State of the United States of America, the Yugoslav Government's record in the field of human rights remained disastrous. Extrajudicial executions, torture, acts of physical violence, arrests and other arbitrary measures were continuing, the police and governmental forces being responsible for most of the violations against members of the Albanian community and minority groups, particularly the Muslims of Sandzak, detainees and citizens protesting against the Government's policy. Peaceful demonstrations were severely repressed, the media were tightly controlled and the independence of the judiciary was flouted. Finally, citizens had no right to change their political leaders.

35. According to Amnesty International, the police and military forces had considerably intensified their activities in the areas of operations of the Kosovo Liberation Army (KLA), which was also allegedly committing numerous violations of human rights. Hundreds of persons were said to have been

victims of extrajudicial executions and 25 unarmed civilians had allegedly been killed since the beginning of 1999 by individuals of Albanian origin. There were numerous enforced disappearances, extrajudicial executions and acts of violence against women. During their confrontations, such as that which took place at Orahovac, the KLA and government troops did not hesitate to blindly execute hundreds of non-combatant civilians. The KLA, which was said to control about 40 per cent of the territory of Kosovo and Metohija, had allegedly abducted about 100 Serbian civilians in Kosovo.

36. According to information published in January 1999 by the Field Operations Department of the Office of the High Commissioner for Human Rights, the situation was worsening as there had been a further escalation in violations between November 1998 and January 1999. The Government had taken measures that had affected the freedom of the media, freedom of association and the legal protection activities that were being supervised by the Office of the High Commissioner. Diplomatic efforts were deadlocked, partly due to the question of the participation of the KLA in the negotiations. The inhabitants of Kosovo and Metohija still did not know which executive, administrative and judicial institutions would be responsible for ensuring the protection of human rights and economic and social rights in their region since the entire existing administrative system needed to be thoroughly restructured. The fact that, for the moment, they were being administered by provisional institutions was creating a situation of anxious uncertainty which, in turn, was giving rise to an atmosphere conducive to further violations of human rights notwithstanding the Milosevic-Holbrooke Agreement of 16 October 1998 under which an OSCE verification mission was established in Kosovo.

37. Most of the acts of violence were continuing, without being widely reported, and the safe zones had diminished, thereby exposing more persons to arbitrary violence and ill-treatment. Acts of aggression were being committed not only against community leaders who were open to dialogue but also against individuals chosen at random and abductions and hostage-taking were also continuing.

38. He went on to say that, according to the impressive report of the Centre for Humanitarian Law at Belgrade for the year 1998, there had been a serious deterioration in the human rights situation in the Federal Republic of Yugoslavia in 1998. About 2,000 persons, most of whom were civilians of Albanian origin, had been killed in Kosovo in 1998 and enforced disappearances constituted a typical violation of human rights. The Centre had recorded about 500 cases of torture or cruel, inhuman or degrading treatment inflicted by the police forces which had not been investigated or punished. The report also referred to violations of the right to a fair hearing and to freedom of expression.

39. According to a report of the Office of the United Nations High Commissioner for Refugees, on 26 May 1998 the Serbian Parliament had promulgated an enactment which, in effect, abolished the autonomy of the universities. On 8 December 1998, hundreds of students from the faculties of philology, law and engineering had demonstrated against that enactment at Belgrade and the leaders of that movement had been arrested on 15 December.

The Human Rights Watch report for 1998, entitled "Detentions and human rights violations in Kosovo", corroborated the other aforementioned governmental, non-governmental, national and international reports.

40. He informed the members of the Committee that the secretariat had received a letter dated 26 January 1999 from the Chairman of the Helsinki Committee for Human Rights concerning the social, economic and cultural difficulties encountered by the Bulgarian community in Yugoslavia, particularly in the frontier zone between Bulgaria and the Federal Republic of Yugoslavia. That letter, which was substantiated by numerous articles, claimed that the Bulgarian minority had considerably diminished and currently comprised only about 25,000 persons.

41. With regard to the situation of the refugees, he quoted a document of the Office of the United Nations High Commissioner for Refugees (UNHCR) dated 17 June 1998 which estimated the number of refugees in the Federal Republic of Yugoslavia at more than half a million of whom 52,900 had been displaced within Kosovo, 13,400 had been displaced from Kosovo to Montenegro and 10,000 others had sought refuge in Albania. According to UNHCR, the economic situation in the country no longer enabled the authorities to meet the most basic needs of those persons.

42. He also pointed out that, on 12 February last, the Council of Europe, the Organization for Security and Cooperation in Europe and United Nations bodies had held a high-level tripartite meeting at Strasbourg during which UNHCR reported that, from December 1998 to January 1999, about 45,000 persons from Kosovo, including 1,500 ethnic Serbs from 90 villages in central and western Kosovo, had been displaced due to the fighting. UNHCR expressed the view that, although 125,000 persons who had been displaced within the Federal Republic of Yugoslavia had been able to return home since October 1998, the tension remained high. The deliberate attacks on civilians, the detention of about 1,500 Albanians from Kosovo by the Yugoslav authorities due to their supposed links with the Kosovo Liberation Army (KLA) and the abduction of 150 persons, mainly Serbs, by the KLA had heightened the ethnic tension.

43. According to the UNHCR report, more than 315,000 inhabitants of Kosovo had been forced to leave their homes. Of those, 210,000 were still in Kosovo, 20,000 were in the Republic of Serbia, 25,000 were in Montenegro, 18,500 were in Albania, 3,000 were in the former Yugoslav Republic of Macedonia and 8,000 were in Bosnia and Herzegovina, while more than 8,000 Albanians from Kosovo had sought refuge in European countries.

44. In a report submitted to the Security Council in January 1999 on the situation in Kosovo (S/1999/99), the Secretary-General of the United Nations had said that he was "increasingly concerned that the spread of violence and the nature of the attacks could lead to a situation of all-out civil war in Kosovo" (para. 35).

45. In that document, the Secretary-General had referred to the massacre that took place in the village of Racak near Stimlje and said that: "On 15 January, the Serb police and, as indicated in some reports, paramilitary units entered Racak. On 16 January, the Kosovo Verification Mission reported that the bodies of 45 Kosovo civilians, including three women, at least one

child and several elderly men, were found, 11 in houses, 23 on a rise behind the village and others in various locations in the immediate vicinity of the village. Many of the dead appeared to have been summarily executed, shot at close range in the head and neck." He had added: "However, investigative and forensic efforts in the wake of this massacre have been wilfully obstructed by the lack of cooperation by the authorities of the Federal Republic of Yugoslavia with the international community" (S/1999/99, para. 12).

46. In a press release issued at Prague on 16 January last, Mr. Jiri Dienstbier, Special Rapporteur of the United Nations on the human rights situation in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, referring to the mass murders at Racak, said that: "Keeping people in a state of fear does not promote democracy, human rights or an end to violence. I urge all parties to the conflict to have the courage to abandon the practice." That statement led Mr. Nobel to believe that it was possibly the tragedy at Racak that had made it possible to hold the negotiations at Rambouillet in February 1999, particularly in view of the shock wave that that incident caused throughout the world.

47. Mr. Aboul-Nasr resumed the Chair.

48. Mr. DIACONU said that an examination of the legislation of the Federal Republic of Yugoslavia would undoubtedly show the existence of texts concerning the protection of persons belonging to minorities. However, the problem was that, when considering the situation in Kosovo, it was difficult to merely assess the extent to which the provisions of the Convention were being implemented and to speak of racial non-discrimination in all its aspects. In that specific case, thought should be given to the future and action should be taken to limit the violations of the most basic rights of human beings - the right to life, liberty and security of person and the right to choose one's place of residence within a State - and to prevent population displacements wherever possible. Furthermore, in order to settle that conflict, it was essential to ensure that the persons responsible for such violations did not enjoy impunity and were brought to justice. Care should also be taken to ensure that the provisions of international humanitarian law, including the Optional Protocols to the Geneva Conventions of 1949, were respected.

49. If that conflict persisted, in a few years' time one might be faced with a depopulated territory, although it had to be admitted that, at the present time, it was difficult to predict the future political status of Kosovo. That would have to await the resumption of the negotiations on 15 March next, in the hope that a solution would be found and accepted by all the parties concerned. It was evident that neither violence and the mass destruction of villages nor terrorism and separatist aims constituted a solution. In that regard, the Committee had never supported separatist movements.

50. He wondered why the periodic report under consideration stated that "members of the Albanian national minority in Kosovo and Metohija abandoned the regular State education system of their own free will" (para. 14) while subsequently acknowledging that "even after that, State-run elementary and secondary schools were not closed". How many pupils had continued to receive instruction in Albanian in the State-run schools in Kosovo and Metohija? In

the Djakovica region of Kosovo and Metohija, how could "pupils members of the Albanian national minority have been regularly attending elementary school classes in Albanian" (para. 15)? How could the situation differ from one region to another?

51. However, he believed that many aspects of the 11-point Milosevic-Holbrooke Agreement referred to in paragraph 51 of the report merited special attention: organization of free and fair elections to be overseen by OSCE, enjoyment of additional rights by the national minorities in order to preserve and express their national, cultural, religious and linguistic identity, establishment of local police under the control of the municipal authorities and the principle that no one would be prosecuted for crimes committed in connection with the clashes in Kosovo and Metohija except for crimes against humanity and international law.

52. Mr. van BOVEN pointed out that, in 1998, the Committee had expressed the opinion that a solution for Kosovo and Metohija should include "a status of the highest level of autonomy as a means for everyone to enjoy their human rights" (A/53/18, para. 209), even though, as attested by its recommendation 21 of 8 March 1996, it was not in favour of separatism or secession.

53. The report under consideration was not encouraging, since it held one of the parties to the conflict responsible for all the ills. That was not a good basis on which to seek a political solution. He regarded those violations of international humanitarian law as grave and also said that he was deeply concerned at the fact that Mrs. Louise Arbor, Prosecutor of the International Criminal Tribunal for the former Yugoslavia, had not been permitted to enter the Federal Republic of Yugoslavia last January in spite of the Committee's recommendations to that effect. It was regrettable that the authorities of the Federal Republic of Yugoslavia had still not allowed her or her associates to enter the country. That fact was particularly regrettable in view of the endeavours that were being made to combat impunity and he hoped that the authorities would review their position on that question.

54. He requested the Yugoslav delegation to give more precise details concerning the representativity of the national communities such as the Turks, the Gorancis, the Muslims, the Romanies and the Egyptians (para. 58). He would also like to know more about the practice of confiscating passports. Finally, he wished to know under what circumstances and for what reasons the circulation of a major newspaper had been banned on 16 December last.

55. Mr. RECHETOV said that he was pleased that the Federal Republic of Yugoslavia had been able to send a delegation to Geneva to present its report in spite of the country's current difficult situation. Like the Rapporteur and Mr. van Boven, he thought that the report should have referred to the situation in the field in a more balanced manner. When such tragedies occurred, a single party to the conflict could not be held entirely responsible.

56. However, he regretted that Mr. Nobel had made no mention of the good offices mission which the Committee had sent to the country a few years earlier and which, in fact, had enabled the Committee to obtain a better

understanding of the situation and to formulate appropriate recommendations. As a member of that mission, he had been struck by the fact that the entire population of Kosovo was boycotting political activity in the country. According to Mr. Nobel, the population's frustration had degenerated into armed conflict. But was that really a solution? The fact that an entire population was refusing to register and vote in legislative and local elections would inevitably entail forceful intervention.

57. Like Mr. Diaconu, he wished to have information concerning the education of the national minorities. While thanking Mr. Nobel for referring to the various ethnic groups living in Kosovo, he said that, a few decades earlier, the Albanian community had formed less than 40 per cent of the population of that region in which it currently constituted a proportion of 80 to 90 per cent. How would that affect the Serbs and other communities in Kosovo?

58. Although mention had been made of numerous violations of human rights and of international humanitarian law, nothing had been said about violations of the right to territorial integrity. The Committee should endeavour to emphasize, in its recommendations, that the rights of all the ethnic groups in the region should be guaranteed with due respect for the territorial integrity of the Federal Republic of Yugoslavia.

59. Mr. GARVALOV said that he had listened with great interest to the explanations given by the delegation of the Federal Republic of Yugoslavia concerning the current situation in that country and had followed closely the account given by the Special Rapporteur. For the moment, he would refrain from commenting on some problems mentioned by the latter, particularly the question of the Bulgarian minority with which he was particularly concerned, because it was his understanding that the discussion was supposed to focus on the follow-up on decision 3 (53) taken by the Committee last August. However, he hoped that the question of the minorities would be addressed once again when the Committee considered the country's periodic report.

60. Accordingly, for the moment, he would merely comment on the situation in Kosovo. The Committee had been right to address that problem since the grave and persistent violations of human rights that were being committed in Kosovo and Metohija affected the basic rights recognized in the International Convention on the Elimination of All Forms of Racial Discrimination.

61. Unfortunately, at the present time, the question was no longer posed solely in terms of violations of human rights; it had assumed the dimensions of a major political crisis that was threatening the stability of the entire region. To avoid a civil war, common sense indicated that the parties concerned should endeavour to find a peaceful, just and equitable solution to the conflict by showing goodwill on both sides. It was regrettable that they currently had greatly differing concepts of what would constitute an equitable solution since the Serbs wanted to retain as an integral part of their territory a province that was now demanding its independence.

62. During its good offices mission in Yugoslavia in 1993, the Committee had probably missed a good opportunity to reconcile the viewpoints of the parties and the international community's scope for manoeuvre had now become very narrow. Although the right of peoples to self-determination was recognized in

Article 1 of the Charter of the United Nations and in articles 1 and 2 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, that did not authorize a people to secede unilaterally as the Committee had explicitly pointed out in paragraph 11 of the general recommendation XXI that it had adopted at its forty-eighth session in 1996.

63. However, in its decision 3 (53), the Committee had recommended that "the highest level of autonomy" be granted to Kosovo even if that province remained under the jurisdiction of Serbia which, at all events, was not contested by any international body or any organ of the United Nations.

64. Any solution to the problem of Kosovo would have repercussions on neighbouring countries and adoption of the military option might destabilize the entire European region. It was essential, therefore, that the parties to the conflict should put aside their bitterness and their mistrust and participate actively in the quest for a peaceful settlement.

65. Mr. de GOUTTES said that he too had followed the explanations of the Yugoslav delegation and the Rapporteur very closely.

66. He fully shared the viewpoint of the previous speakers and thanked Mr. Rechetov for referring to the Committee's good offices mission which, unfortunately, had produced no results. He agreed with him that the report under consideration (CERD/C/364) was too unbalanced and tended to cast the blame on only one of the parties to the conflict. As the Chairman had rightly emphasized, the Committee, which sometimes engaged in a very meticulous examination of the situation in a country where there was no real problem of racial discrimination, often found itself at a loss when it was faced with a grave crisis in which one or other minor aspect of the implementation of the Convention was no longer really relevant.

67. Although the situation in Kosovo and Metohija could indeed be regarded as a grave crisis, it also obviously constituted a case of racial and ethnic discrimination which fell fully within the framework of the Committee's mandate. Hence, in keeping with decision 3 (53) taken by the Committee at its session last August, he wished to ask the Yugoslav delegation what specific attempts had been made to establish a meaningful dialogue with the Albanian leaders in Kosovo and, in particular, what progress had been made in regard to the granting to that province of the "highest level of autonomy" that had been regarded as a basis for negotiations to reach a just and lasting solution.

68. Mrs. McDOUGALL said that many of the points that she intended to raise had already been addressed by the Rapporteur and other speakers.

69. However, she wished to highlight the conditions in which the humanitarian organizations were working in Kosovo. Several international human rights organizations had indicated that the Government of the Federal Republic of Yugoslavia was preventing them from rendering assistance to the approximately 250,000 persons who had been displaced in that province. For example, one of their reports referred to attacks on members of the Mother Theresa Association in July and August of the preceding year. The authorities also seemed to be restricting access by humanitarian aid

organizations to some zones. As a result, the International Committee of the Red Cross had apparently been prevented for a whole month from visiting a site and eight UNHCR trucks transporting one month's food for 30,000 persons had apparently been turned back at a checkpoint.

70. Moreover, according to a recent report by Physicians for Human Rights, physicians and health workers who had come to care for the wounded had been arrested and subsequently killed by Serbian government forces. Physicians of Albanian origin, in particular, had been the target of acts of intimidation including imprisonment, torture and even enforced disappearance and murder as attested by several press communiqués. That was only one of many examples of the manner in which the basic rights of the Albanians of Kosovo were being flouted. Access to medical care should, in effect, be guaranteed to all, including civilians and military personnel.

71. Mr. SHERIFIS said that recognition should be given to the goodwill that the Government of the Federal Republic of Yugoslavia had shown by sending a large delegation to present a detailed report to the Committee.

72. Tribute should also be paid to the objectivity of the Rapporteur, who had analysed the situation in a highly competent manner.

73. Since everything, or almost everything, had now been said on that question, he merely wanted to return to some points that he wished to highlight.

74. As the Committee had already emphasized in its decision 3 (53) of August 1998, a peaceful solution to the problem of Kosovo could be achieved only by granting broad autonomy to that province with due respect for the territorial integrity of Serbia. That solution should also be in conformity with the international human rights instruments and should therefore take account, in particular, of the rights of all the displaced persons in the province, regardless of their origin. All those persons should be able to return to their homes, failing which they should be granted fair compensation. He referred to the recommendation that the Committee had made in that regard.

75. He noted that neither the 1996 Memorandum of Understanding on education, which had been signed by President Milosevic in person, nor the March 1998 Agreement on the same subject had ever been implemented. However, everyone knew that education was a very important aspect of the enjoyment of human rights.

76. He echoed the hope expressed by previous speakers that a peaceful solution would be found in the next few days during the resumption of the negotiations at Rambouillet.

77. The CHAIRMAN, speaking in his capacity as a member of the Committee, endorsed the comments of Mr. Sherifis and added that all the displaced persons should not only be able to return to their homes or obtain fair compensation but should also be able to choose between those two solutions.

78. In his capacity as Chairman, he invited the Yugoslav delegation to reply to the questions and comments of the members of the Committee.

79. Mr. DJORDJEVIC (Yugoslavia) said that his delegation had listened attentively to the comments of the members of the Committee and wished to thank the Rapporteur for his excellent presentation.

80. The problem of Kosovo and Metohija was complex and had given rise to many erroneous interpretations. For example, in that connection, reference was often made to "armed conflict", which implied that the provisions of the conventions concerning the law of war were applicable in that regard. However, in the eyes of the Serbs, there was no armed conflict since the Kosovo Liberation Army was neither more nor less than a terrorist organization which, consequently, deprived the International Criminal Tribunal of all jurisdiction.

81. With regard to the efforts to establish a dialogue, he pointed out that, although the Government of Serbia had invited the representatives and leaders of the Albanian political parties to the negotiating table on 18 occasions, they had not come. When the negotiations began at Rambouillet, 11 basic principles had been defined with Mr. Richard Holbrooke, the Special Envoy, including the principle of the territorial integrity of Serbia. The Albanians had rejected that principle and wanted not only a referendum on self-determination within three years but also the deployment of NATO forces on the ground. It was they who were now no longer satisfied with "the highest level of autonomy".

82. After making those few preliminary comments, the Yugoslav delegation offered to provide more detailed replies at the next meeting.

83. The CHAIRMAN, speaking in his capacity as a member of the Committee, took due note of the fact that the Yugoslav delegation did not consider the problem of Kosovo and Metohija as an "armed conflict". In that case, he wished to know how that situation could be described.

84. In the case in question, he felt that it was important that all the parties concerned should enjoy humanitarian treatment and that the conflict should finally be brought to an end. However, if, in that type of situation, one of the parties described the other as terrorists, there could be no further talk of humanitarian law.

85. Finally, he hoped that the Yugoslav delegation would reply to the Committee on two specific questions: what were the prospects and what could be hoped for?

86. In his capacity as Chairman, he invited the Yugoslav delegation to conclude the consideration of the situation in Kosovo and Metohija at the next meeting.

The meeting rose at 1 p.m.

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Fifty-fourth session

SUMMARY RECORD OF THE 1315th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 March 1999, at 3 p.m.

Chairman: Mr. ABOUL-NASR

later: Mr. YUTZIS

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (continued)

Yugoslavia (continued)

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Tenth and eleventh periodic reports of Italy

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The meeting was called to order at 3.10 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Yugoslavia (continued) (CERD/C/364)

1. At the invitation of the Chairman, the members of the delegation of Yugoslavia resumed their places at the Committee table.

2. Mr. DJORDJEVIC (Yugoslavia) said that the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia were firmly resolved to continue seeking a peaceful solution to the problems in the Autonomous Province of Kosovo and Metohija at the peace talks sponsored by the Contact Group, which were to be resumed in France in a few days' time. They would spare no effort to reach a political settlement on all outstanding issues.

3. Yugoslavia had participated in the drafting of the Geneva Conventions and their Additional Protocols and had incorporated them in its domestic legislation. However, the rules of international humanitarian law were not applicable to the situation in Kosovo and Metohija and certainly not to the activities of the so-called Kosovo Liberation Army (KLA), which was a terrorist organization and as such could not be accorded the legitimacy associated with application of the rules in question. Certain influential international actors were waging a relentless campaign against terrorists such as the Kurdish Workers' Party (PKK) and Osama bin Laden but supported the KLA which, according to reports by the Verification Mission of the Organization for Security and Cooperation in Europe (OSCE), was manifestly guilty of terrorist acts. Such an approach was counter-productive and offered support to forces that were opposed to dialogue and the search for a peaceful political solution.

4. There was no danger whatsoever of a spillover of the conflict into neighbouring countries. On the other hand, it was clear from statements by the United Nations Secretary-General and OSCE that northern Albania had become a terrorist stronghold from which well-armed and well-organized terrorists from all over the world entered Yugoslavia illegally in order to commit terrorist acts, mainly in Kosovo and Metohija.

5. He was unaware of any problems of freedom of movement. The cases mentioned by non-governmental organizations (NGOs) could probably be explained in terms of security risks. The Verification Mission, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other international organizations were satisfied with their cooperation with the Yugoslav Government. The International Committee of the Red Cross (ICRC) was running courses for the Yugoslav police and armed forces in international humanitarian law. Some 2,000 OSCE verifiers and at least 3,000 representatives of international NGOs were given free access to all sites. They only ran into difficulties when they violated domestic legislation. A British subject, for example, who had entered Yugoslavia illegally from Albania, had been arrested and sentenced.

6. Mr. HODZA (Yugoslavia) said that, following the signing of the Memorandum of Understanding in 1996 between President Milosevic, the then President of Serbia, and Dr. Ibrahim Rugova, representing the ethnic Albanian population of Kosovo and Metohija, a nine-point education agreement had been drawn up. Pursuant to point 8, all public buildings used for elementary and secondary education had been handed over to pupils and students of Albanian origin with effect from March 1998. The curriculum in all such establishments was to be modelled on that used in other State schools. In accordance with the provisions of point 2 concerning higher education, the Albanology Institute in Pristina had been reopened and ethnic Albanian students and teachers had returned to the Engineering Faculty in the Technical University and the Law Faculty, the Economics Faculty and the Teacher Training College in Pristina University by 30 April 1998. Since 15 February 1999, courses in the Law Faculty and the Teacher Training College were being taught in the Albanian language. All in all, 90 per cent of the measures envisaged under the education agreement had been implemented. In terms of space, ethnic Albanian students and teachers occupied 36,000 square metres and Serbian and Turkish students and teachers 32,000 square metres. Ethnic Albanians had been provided with canteen facilities. With the assistance of the European Commission and the International Management Group (IMG), the facilities at Pristina University were to be redesigned and reconstructed. All costs relating to the maintenance of educational establishments were borne by the Ministry of Education of the Republic of Serbia.

7. The Romani language was taught only at the elementary level.

8. The idea that the population of Kosovo and Metohija was composed solely of Serbs and Albanians was a misconception. There were also Montenegrins, Turks, Roma, Goranies, Egyptians and many other ethnic groups. The Autonomous Province of Vojvodina was composed of 26 national minorities and had no problems whatsoever. It was a fine example of the fact that Yugoslavia was a multi-ethnic, multicultural and multireligious country. In Kosovo and Metohija, not all ethnic Albanians were in favour of separatism and terrorism but it was difficult to resist extremist pressure. They were prevented from exercising their rights under existing legislation and forced to join in the boycotting campaign. As they had not participated in the 1991 census, the existing population figures were unreliable. According to official estimates, there were between 600,000 and 800,000 non-Albanians and between 800,000 and 1 million ethnic Albanians in Kosovo and Metohija. There was no truth in the claim that 90 per cent of the population were ethnic Albanians. Those who advocated large-scale autonomy should ensure that all the minorities involved were taken into account. The Serbian delegation to the current talks in France reflected all components of the Autonomous Province of Kosovo and Metohija but the Albanian delegation was mono-ethnic and included terrorists.

9. With regard to NGO allegations of the use of torture to extract statements from detainees, Yugoslavia had discussed its initial report to the Committee against Torture (CAT/C/16/Add.7) at that Committee's previous session and would respond to questions raised on that occasion at the Committee's next session in April 1999.

10. Anti-terrorist measures taken by the police had been unjustifiably represented as posing a threat to human rights. With regard to the events in

the village of Racak on 15 January 1998, police officers had been sent to the village to arrest a terrorist group which had killed a policeman five days previously. The group had carried out eight terrorist assaults in two districts, kidnapping nine persons and killing an ethnic Albanian policeman. As the police had entered Racak, they had been attacked by terrorists using automatic weapons, hand grenades and mines. A police officer had been injured and a number of official vehicles had been damaged. The police had defended themselves and killed several dozen terrorists. There had been no civilians among the dead. Sometimes armed terrorists did not wear the KLA insignia so that they could move about more freely in the area. The police had seized automatic weapons, sniper rifles, ammunition, hand grenades and other matériel. The OSCE Verification Mission had been informed and had visited the site together with the examining magistrate from Pristina, but the investigation had been interrupted by gunfire from terrorists in the surrounding hills.

11. With regard to the incident in the village of Rogova on 29 January 1999, a large number of terrorists had attacked police officers as they had been searching for a group of terrorists who had killed a 22-year-old policeman the previous day. Twenty-four terrorist KLA members had been killed in the fighting. Yugoslav experts and experts from Finland, Belarus and the Russian Federation had carried out post-mortem examinations on those killed in both villages. Preliminary findings were available but the Finnish report had not yet been issued.

12. Ms. SCEPANOVIC (Yugoslavia) said that ethnic Albanians were free to take part in elections but did not do so because their leaders urged them to boycott the polls. The same applied to population censuses because an accurate census would show that ethnic Albanians accounted for a far smaller proportion of the population than was usually claimed.

13. In addition to Albanian-language programmes on State radio and television, there were 50 newspapers and periodicals in the Albanian language in Kosovo and Metohija, compared with only one daily newspaper in the Serbian language.

14. Terrorism was the chief impediment to a settlement of the current problems in Kosovo and Metohija. The ethnic Albanian leader Ibrahim Rugova was ostensibly in favour of achieving a settlement by non-violent means but he had never condemned violence, ethnic cleansing or the killing of civilians, police officers and members of the armed forces by terrorists. On the question of KLA participation in negotiations, she said that terrorism was not a form of political expression. Would any other country allow terrorists to join in negotiations on a peaceful settlement?

15. Yugoslavia's report was not one-sided. The truth was that power could not be imposed by force on the civilian population in Kosovo and Metohija.

16. There had been cases of humanitarian aid channels being used to supply terrorists with arms and matériel. In addition, it was common knowledge that humanitarian aid to Kosovo was reaching only Albanians and not Serbs.

Montenegrins, Turks or Muslims. The allegations that doctors had been maltreated were true: three doctors had been killed by the Albanians for refusing to join the KLA.

17. Journalists had been manipulated to give a false picture of human rights in Kosovo and Metohija. They did not report the actual activities of terrorist organizations but instead claimed that the terrorists were victims. The Albanian-language press was often the source of misinformation and promoted racial hatred and secession, yet no Albanian-language paper had been banned. One had closed because it had not met its financial obligations to its printers.

18. The Serbian approach was a multi-ethnic, multicultural and multireligious one, which aimed to protect all citizens on an equal footing and to create a normal, peaceful life for them. The separatist approach was one of ethnic purity in Kosovo and Metohija; extremist Albanian leaders sacrificed not only Serbs and Montenegrins but even Albanians who opposed them.

19. Mr. NOBEL said that it would be in the interests of the State party and of those suffering in Kosovo and elsewhere in the region to restore confidence. That would only be possible if all parties began respecting human rights, international humanitarian law and the rule of law. In any conflict there was nothing to prevent a civilized commander from making use of international humanitarian law in order to protect the wounded, prisoners and civilians. Anyone who had committed crimes should be brought to justice in accordance with the law.

20. Mr. HODZA (Yugoslavia) said that Yugoslavia was resolved to find a peaceful solution in Kosovo and Metohija.

21. The CHAIRMAN thanked the members of the delegation of Yugoslavia for their answers to the Committee's questions and expressed the hope that a speedy settlement could be found.

22. The delegation of Yugoslavia withdrew.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and eleventh periodic reports of Italy (CERD/C/317/Add.1)

23. At the invitation of the Chairman, Mr. Moreno, Mr. Citarella, Mr. Martello, Mr. Pierangelini and Mr. Ricci (Italy) took places at the Committee table.

24. Mr. MORENO (Italy) said that significant changes had taken place in his country's demographic composition in recent years. With the decline in the Italian birth rate, Italy's traditionally - and much publicized - generous social policies and the recent influx of, in particular, Kosovo Albanians and Kurds, as well as clandestine immigration from North Africa, Italian society was becoming progressively more multi-ethnic. Reactions to the growing numbers of non-European Union (EU) citizens had been mixed. The negative

reactions were neither discriminatory nor racist in nature, but were a response to the involvement of many illegal migrants in illicit activities such as drug trafficking and prostitution; their very entry to the country could in some cases be categorized as trafficking in human beings, particularly young women and children.

25. Despite the high unemployment rate, employers' and employees' associations alike were in favour of the reception, integration and regularization of clandestine migrants whose migration was due to exceptional political situations or extreme poverty in their own country. The Italian Government had therefore decided to undertake a radical review of its immigration and residence policy.

26. New legislation - Act No. 40, of 6 March 1998 (Act 40/98) and its implementing legislation - aimed to systematically regulate the large number of nationals of third countries, chiefly by establishing a policy of limited, planned and regulated legal entry; combating clandestine immigration and the criminal exploitation of migrant flows; and establishing effective integration procedures for new immigrants and aliens with legal residence in Italy. Among the main innovations under the new Act were the provisions of section IV, recognizing the right to family reunification, with emphasis on the protection of children. The Act also guaranteed the right to residence on humanitarian grounds and provided for a "social protection" residence permit, through specific provisions for more vulnerable groups. There were also provisions for job-seekers to become self-employed.

27. Under section V of the Act, aliens legally resident in Italy became eligible to a range of health, housing and social services. Language and vocational training courses also contributed to their social integration, and an advice centre for aliens and their families had been set up. The aim of the measures was to promote stable residence under the same conditions as those enjoyed by Italians. The Act also provided for the establishment of a Commission on integration policy, made up partly of representatives of migrants, to research and report on the problems of foreign residents from countries outside the European Union.

28. Articles 41 and 42 of the Act were of direct relevance to the Convention insofar as they introduced specific measures against discrimination on racial, ethnic, national or religious grounds. Article 41 gave a full definition of discrimination as distinction, exclusion, restriction or discrimination in the enjoyment of human rights and fundamental freedoms in all fields of public and private life. Even more important from the standpoint of action against racial discrimination was article 42, which provided for civil action in cases of discrimination, under a pa ticularly speedy and effective procedure whereby a foreigner claiming to be the victim of discrimination by a private person or public administration could address the judge directly, without the help of a lawyer, whereupon the judge could hand down a decision with immediate effect, ordering the suspension of the discriminatory act and its effects. Penalties included payment of compensation, mandatory implementation by an employer of a plan to eliminate discrimination and exclusion from public contracts. It was up to the defendant to show the absence of discrimination, an inversion of the burden of proof that would clearly facilitate legal recourse and the protection of the victim. Article 42 was thus a legal instrument of some

originality, not least because the approach, in addition to involving an expeditious, relatively informal procedure, was based on more than mere punishment, dealing with the consequences of the damage and, above all, restoring the status quo ante. Criminal and civil action were thus complementary in combating racism and xenophobia.

29. Specific sanctions against employers who practised discrimination included the withdrawal of State subsidies or temporary exclusion from tendering for public projects. In addition, certain major trade unions had been given the power to institute legal proceedings in cases of collective discrimination, even if workers' rights were not directly violated.

30. At the regional level, observation, information and legal advice centres had been set up to prevent discrimination against foreigners. The principle of access to low-cost housing or to priority waiting lists for public housing had also been established and a variety of housing solutions for foreigners had been devised.

31. A programme document on immigration policy, approved on 5 August 1998, provided for Italy's action at the international level, general guidelines for entry flows, and integration policies. Following the principles established by the document, and with a view to normalizing de facto situations, a Council of Ministers Directive dated 6 August 1998 provided for humanitarian residence permits to be issued to certain categories of foreigners, who could subsequently obtain residence permits of the kind provided for in the new legislation. In order to keep planning consistent with labour market requirements, integration policy and the numbers of aliens in Italy including those in an irregular situation, the document set aside part of the 1998 quota for foreign workers who could show that they had been resident in Italy since before the Act's entry into force and that they were employed or wished to become self-employed. The original quota for 1998 had been set at 38,000 but over 400,000 applications had been received and probably around 300,000 had now been regularized. In addition, de facto family reunifications could also be - and had been - regularized.

32. There had been a fall in the number of racist, xenophobic and anti-Semitic incidents during 1998. One serious incident, which had earned the opprobrium of public opinion, had occurred at a football match, when a group of fans had waved banners carrying anti-Semitic slogans. Proceedings would be taken against them. Acts of political intolerance or racist behaviour had led to 29 arrests, 22 searches and 128 complaints, thanks not only to police efforts but also to the effectiveness of the legislation against all forms of racial discrimination (Act No. 205 of 25 June 1993), which penalized the dissemination of ideas based on racial or ethnic hatred and incitement to commit acts of discrimination. Act No. 205 had also made it possible to prevent the establishment of racist organizations and to dissuade extremist groups from disseminating racist propaganda.

33. The Senate was currently examining a bill on the protection of linguistic and historical minorities, approved by the Chamber of Deputies on 17 June 1998. Its aim was to allow the culture of all linguistic groups to develop in harmony. Its main provisions covered: recognition and identification of minorities; the role of provinces and communes in

identifying areas inhabited by protected linguistic minorities; public teaching of minority languages and culture, including university initiatives to facilitate training; the possibility for local councillors to use protected languages during council and other local meetings in areas inhabited by linguistic minorities; the right to speak and write protected languages in local public administration offices and to use them in legal proceedings; public regional radio and television news and programmes in the protected languages; subsidies for private media and publishing in the protected languages; adoption of traditional local place names in addition to official names; and the adaptation of regional laws to the principles laid down in the bill, unless the regional laws already provided for more favourable conditions. The text was based on the Council of Europe's Framework Convention for the Protection of National Minorities, ratified by Italy in 1997. There was already a raft of laws in Italy guaranteeing the rights of members of different minorities; all regions home to minorities had introduced special legislation to protect and enhance their cultural and linguistic heritage.

34. Previous periodic reports had described the various legislative measures intended to protect the rights of members of nomad (Roma) minorities in Italy, some of them specifically designed to ensure their jurisdictional protection and access to education in view of their nomadic way of life, as a form of "affirmative action" to avoid the difficulties of applying local laws where they were prejudicial or inapplicable to nomads. Many regional laws also had specific clauses on the protection of Roma populations. A bill was now before the Senate on the protection of the right to a nomadic way of life and the recognition of Roma populations as a linguistic minority". Particularly noteworthy was the provision enabling non-EU Roma to claim the status of stateless persons under the terms of the 1954 Convention relating to the Status of Stateless Persons. The bill also provided for the creation of equipped sites and for special educational programmes for Roma children.

35. Bills to provide greater protection for the Slovene and Ladino minorities, specifically guaranteeing the use of their languages and addressing the issues of teaching, schools and protection of the cultural and artistic heritage were currently being debated by the Parliament. The bill on the Ladino minority had been adopted by the Chamber of Deputies in May 1998, and provided inter alia for the participation of a Ladino representative in local public bodies. Two recent legislative decrees contained provisions for Ladino radio and television programmes and protection of the Ladino minority in the province of Trento.

36. Statistical tables were available for consultation by the Committee. The delegation requested deferral of the deadline for submission of the next periodic report, due in March 1999.

37. Italy had been overwhelmed by an influx of non-EU nationals as a result of the dramatic situations in the former Yugoslavia and Albania, and the Kurdish problem in Turkey. An increasing number of citizens from North African countries continued to arrive for work, many of them illegally. The Government was systematically concluding agreements with all the countries of the Mediterranean Basin, particularly developing countries, to help with economic development and job creation so as to obviate the need for them to

export labour; it was the key to its cooperation policy. Special procedures and reception centres had been set up to respond to the needs of individuals who came to seek work and to improve their prospects; they should be respected for their choice and receive the same treatment as political refugees.

38. Mr. DIACONU (Country Rapporteur) welcomed the large and representative delegation from Italy and the report which bore testimony to Italy's regular dialogue with the Committee. He appreciated the additional information provided orally, especially on Act 40/98.

39. Italy's position vis-à-vis the Convention was somewhat complex; it accorded special constitutional status to certain ethnic and linguistic minorities and had been confronted with massive immigration from southern Mediterranean and eastern European countries, in addition to the influx of refugees from Albania and the former Yugoslavia. Italy's policies clearly aimed to eliminate racial discrimination, and its legislation fulfilled most of the requirements of the Convention, but the report, which was an update, did not do full justice to the complexity of the situation. It contained no statistics on the German-speaking, French-speaking Ladino, Slovene or other minorities, nor on the Roma or immigrants from African countries, Eastern Europe, Albania and the former Yugoslavia. How many were there? How many Roma originated in Italy and how many had migrated from other countries? If Italy had become or intended to become a party to the European Framework Convention for the Protection of National Minorities, to which minorities did it intend applying its provisions? Did Italy distinguish between "historical and linguistic" minorities and "national" minorities, which appeared separately in its legislation? According to some sources, the general bill on minorities had been under discussion for over 15 years; could the delegation indicate what stage it had reached? The same sources claimed that a law on minorities had been adopted by the Chamber of Deputies in June 1998 only after the list of minorities to be protected, which had originally included the Roma and the Sinti, had been deleted; why did that law, now before the Senate, not recognize the Roma as a minority and how were their rights protected?

40. He noted with interest the amendments to legislation on immigration controls to improve the exercise of illegal immigrants' rights, to simplify family reunification, and to subject decisions on expulsion to criteria more in conformity with international treaties. Another important development was the regularization of the situation of as many as 300,000 aliens already in Italy, facilitating their access to work, and to social and health services, protection by law, and gradual integration into Italian society.

41. With reference to the information provided in paragraph 6 of the report, the Human Rights Committee in its August 1998 report, had expressed concern at the increase in incidents of racial intolerance and had noted slow progress in action to combat racial discrimination, recommending that Italy should take all necessary steps. In its 1995 report, the Committee on the Rights of the Child had in turn underlined the need to take measures to prevent a rise in discriminatory attitudes and prejudices towards particularly vulnerable children, including Roma and foreign children. NGOs cited attacks against foreigners in several Italian cities; although the perpetrators had in some cases been severely punished, the authorities had not recognized the racist

character of certain attacks. As the report under consideration had been submitted prior to the examination by the Human Rights Committee of the report by Italy, it was important for the delegation to present its assessment of the current situation, in the light of that Committee's conclusions and of the fact that certain acts of racial violence had occurred in the years 1997 to 1998.

42. On the subject of article 3, the Committee could concur that the Italian Government had always outspokenly condemned any form of racial segregation; however, might the measures taken with regard to the Roma ethnic group - whether Italian citizens, long-term residents or immigrants from the former Yugoslavia and other countries - not lead to de facto segregation? According to NGO reports all Roma were treated as "nomads" and placed in camps situated far from towns, sometimes in difficult conditions, which led to their marginalization and their separation from the majority of the population. The Rome City Council had allegedly provided 70 families with a site badly contaminated with chemical waste. Clarification of such claims would be appreciated. Were all Roma in fact nomads? What were the consequences of life in the camps for the exercise of human rights.

43. The implementation of article 4 through decree-law No. 122/93 showed that a democratic country could prohibit the spread of ideas based on racism and punish racist organizations and their members while preserving freedom of expression and democracy. The law forbade even the display of racist symbols at public meetings and sporting events and increased the powers of law-enforcement agencies. As in other countries, the implementation of provisions regarding article 4 raised many difficulties. The murderer of a young Moroccan had been sentenced to 22 years in prison; and a man and his mother, members of a criminal association promoting ethnic, national and racial hatred, and guilty of attacks against the property of foreigners and of spreading literature attacking persons of colour had been arrested. At the same time, in many cases, the authorities denied the racial motivation of such acts and therefore failed to apply the harsher sentences provided for in law (in the case of the young Moroccan, the motive for the crime was given as "amusement"); the statistics were thus distorted. Various NGO reports also mentioned racially-motivated acts of violence against the Roma. Xenophobia and manifestations of racism were observed particularly in northern areas dominated by the Lega Nord (Northern League) party, whose own Secretary-General had stated that immigrants were a constant danger for the security of Italian citizens, although that remark had been made within the context of a crime committed against two Italian girls by a Macedonian. Another party, the Alleanza nazionale, spoke out against multinational society and cultural pluralism, and had launched a campaign to close immigrant centres in Bologna as being "risk factors" for the local community. Similarly, the Movimento sociale italiano, considered a Fascist organization, had reportedly organized a series of raids on the African population near Turin, where the police had allegedly failed to intervene. What was the Government's attitude, and what measures did it intend to take to strengthen the application of the law by judicial bodies and the police, since the law itself did offer an adequate basis for such action?

44. Italy had taken many measures to ensure the implementation of article 5, but difficulties had arisen with regard to clandestine foreign workers;

regularization of their residence in Italy was therefore the best solution to enable them benefit from the protection of the law. The report gave details of the measures taken regarding the entry, stay and expulsion of foreigners and their protection as workers, but in the case of clandestine workers such protection was not always provided in practice - hence NGO reports that when a firework factory near Naples had exploded causing one death and several injuries, all immigrants among the survivors who had complained to the police had immediately been presented with deportation orders and no other action had been taken. The new law on aliens appeared to be a positive step, particularly with regard to discrimination in the labour market, and the Committee awaited details of its application with interest.

45. The decision to allow non-EU workers leaving Italy to claim back their social security payments with interest at 5 per cent per year (para. 48) was one measure of justice to foreign workers, an initiative not previously encountered by the Committee in any other EU country. The innovations introduced by the National Institute for Social Security in 1996 to provide better guarantees for foreign workers were another welcome development.

46. The report contained no references to the implementation of article 6, regarding effective protection and remedies before the courts and State bodies. NGO reports cited several cases of violence by the police against persons of colour and Roma, including frequent raids on Roma camps, an incident at Rome airport involving a Ghanaian citizen resident in Denmark, and discriminatory acts against Roma and other detainees. The Human Rights Committee and the Committee against Torture had noted the inadequacy of sanctions against police and prison officers, and the latter had noted a dangerous trend towards some racism, since victims were either from foreign countries or belonged to minorities. The Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had also noted that foreigners were at considerable risk of maltreatment in prison, had asked for an independent enquiry into the treatment of detainees in Milan, and had recommended that the Government ensure better training of prison guards, underlining the rights of detainees. There were also cases where legal proceedings for racially-motivated violence had either been adjourned or never been instituted. Could the delegation provided statistics on prisoners by ethnic group?

47. On article 7 and with reference to paragraphs 49-52 of the report, he requested data on the number of schools and pupils for each minority and ethnic group and the curricula in those schools. Although there were long-standing obligations towards the Slovenian minority, protection had not reached levels envisaged in the Italo-Yugoslav Ossimo Accord of 1975 or in Italian basic law. The Human Rights Committee had referred to protection of the rights of the Slovenian minority in its recommendations to Italy. Could more details be provided? Mr. Moreno had mentioned separate laws for each minority - why was that necessary? Evidently their situations were different, but separate laws were time-consuming to produce and could lead to different treatment for different minorities, and hence to discrimination.

48. It might be advisable, as recommended by the European Commission against Racism and Intolerance (ECRI), for Italy to establish a specialized independent body with significant responsibility for combating racial

discrimination. Italy had a wealth of legislation, and progress could be seen on implementation, but there were still problem areas requiring clarification and resolution.

49. Mr. SHERIFIS said that Italy's reporting record, despatch of a high-level delegation and response to issues raised previously by the Committee testified to its intention of continuing a substantive dialogue with the Committee. Despite the substantial increase in the number of foreigners entering Italy, there appeared to be considerable improvement in the State party's compliance with the Convention.

50. Referring to paragraph 2 of the report, he asked whether non-governmental organizations (NGOs) participated in the drafting of Italy's periodic reports. If not, could they contribute their input in another manner?

51. Concerning implementation of article 2 of the Convention, in the light of the recent influx of non-EU citizens into Italy, he inquired whether consideration had been given to establishing a post of ombudsman on racial discrimination, as had been done in many other countries.

52. Regarding implementation of article 3, he said that the positive position of the Italian Government on racial discrimination was well known, but that did not rule out covert segregation as an unintentional by-product of the actions of private persons. For that reason, the Committee had adopted its General Recommendation XIX on article 3, pointing out that racial segregation could also arise without any initiative or direct involvement by the public authorities and inviting States parties to monitor all trends which could give rise to racial segregation, to work for the eradication of any negative consequences that ensued and to describe any such action in their periodic reports.

53. Turning to implementation of article 4, he said that Decree-Law 122 of 26 April 1993 brought Italian legislation into line with the requirements of both article 4 (b) and article 2.1.(d). Had the "remarkable results" brought about by the introduction into the legal system of specific rules to eradicate all forms of racial, ethnic and religious discrimination, referred to in paragraph 18, been borne out over the previous 12 months?

54. On implementation of article 5, he noted that non-EU workers who had left Italy were to be allowed to request the payment of their social security contributions, increased by 5 per cent yearly, (para. 48). It was to be hoped that that laudable initiative would serve as a model to all countries, both in Europe and elsewhere.

55. In connection with article 7, he commended Italy for enshrining in its Constitution the principle whereby schools were open to Italian and foreign citizens alike (para. 50); there again, such a practice should be emulated in other countries.

56. In 1993, the Committee had adopted General Recommendation No. XVII on the establishment of national institutions or commissions to facilitate the implementation of the Convention. Would the Italian Government consider establishing such a national institution?

57. Had Italy initiated procedures to ratify the amendment to article 8 (6) of the Convention on financing the Committee? If not, he hoped that the Italian Government would consider doing so.

58. Credit was due to Italy for having been one of the first States parties to make the declaration under article 14. Had the Italian Government made a sufficient effort to publicize the existence of the individual petition procedure? For such a declaration to be effective, people who might avail themselves of it must know about it. Did Italy publicize the periodic reports which it submitted to the Committee and the Committee's concluding observations?

59. Mr. FERRERO COSTA agreed with the Country Rapporteur on the need for information on the population of foreigners and immigrants in Italy, recalling the Committee's previous request for up-to-date data on the composition of the population, on the "social indicators" of non-integration of the least favoured social groups of the population, on migratory flows and on the number of foreigners expelled.

60. The written report gave the impression that there were three categories of foreigners in Italy - nationals of EU member countries, people from non-EU European countries, such as Albania, in respect of whom there was apparently special legislation, and all other foreigners. He pointed out in that connection that there could be no discrimination between different categories of foreigners on the basis of their national origin or racial group. He asked the Italian delegation to comment.

61. Paragraph 42 (a) referred only to the "difficult problems" associated with non-EU migrants, whereas there was nothing about their rights. That statement ran counter to the spirit of the Convention and suggested the presence of prejudice. Paragraph 42 (b) spoke of the planning of migration flows. How did Italy intend to introduce such quotas in a non-discriminatory fashion?

62. Act 40/98 on the social integration of foreigners, described in the oral introduction, was a positive initiative. How did the Italian Government put such integration into practice?

63. According to paragraph 5 of the report, a commissioner had been appointed for migration from non-EU countries. Had the commissioner already begun work? What machinery specifically addressed the status and integration of foreigners in Italy?

64. Two areas of concern had not been taken up adequately in the report. One was that of the local police, referred to only generally in paragraph 7. There had been a number of reports from NGOs alleging racially motivated ill-treatment of detained foreigners. In the past, the Committee against Torture had noted that the majority of victims of ill-treatment in Italian prisons were either from certain foreign countries or belonged to minorities, and had expressed its concern about a dangerous trend towards racism. According to the Anti-Semitism World Report 1997, there had been reports of police abuse, a high proportion of which had involved non-EU immigrants (mostly Africans) and Roma. The Human Rights Committee, the Council of Europe's Committee for the Prevention of Torture and Amnesty International had

raised similar questions. He asked whether the allegations were true and, if so, what steps had been taken to punish police officers who had committed such acts and what preventive measures were envisaged.

65. The second area of concern not discussed adequately in the report had to do with acts of violence committed by xenophobic groups. The Anti-Semitism World Report 1997 had reported on football matches at which fans hurled racist insults at black players and fans of opposing teams. Sometimes such incidents had erupted into violence, which had often been incited by groups of skinheads. In April 1997, two skinheads dressed in the costumes of the Ku Klux Klan had hoisted a black puppet figure bearing the words "Negro go away" and directed at a member of the Verona football team. According to the Written Comments of the European Roma Rights Center Concerning Italy, as recently as 9 February 1999 an Italian television programme had filmed a deputy of the Northern League party carrying out what he had proclaimed was an act of "ethnic cleansing", spraying disinfectant on the "affected" parts of a train compartment in which two African women had been seated. A week later, on the same television show, Senator and Northern League leader Umberto Bossi had refused to apologize in the name of his party for the "spraying" incident. What was the current situation with regard to the problem of skinheads, and what was the Italian Government doing to deal with xenophobic incidents in general? Were there laws to address the issue, and how were they being applied? He reminded the Italian delegation of the Committee's previous recommendation that the Italian authorities should urgently take more effective measures to curb racial violence and xenophobia in all their forms; that concern had not yet been met fully in the eleventh periodic report or the oral presentation.

66. In closing, he asked the Italian delegation to comment on the key areas in Italy identified by the Council of Europe's European Commission against Racism and Intolerance as meriting particular attention, namely the need for more awareness-raising to combat intolerance, especially among young people, for a prompt and adequate response on the part of the judicial authorities in cases of violent manifestations of racism and xenophobia, especially by law enforcement officers, and for more reliable and efficient implementation of the legislation against racism and intolerance, the possibility of setting up a specialized body to combat racism and intolerance, and collaboration between the State, voluntary organizations and NGOs on policies concerning assistance to immigrants.

The meeting rose at 6 p.m.